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LETTER DATED 26 MARCH 1999 FROM THE PRESIDENT OF THE GOVERNING COUNCIL OF THE UNITED NATIONS COMPENSATION COMMISSION ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

The Governing Council of the United Nations Compensation Commission held its thirty-first session at Geneva from 15 to 18 March 1999. The delegations of Bangladesh (on behalf of eight claimant countries), Kuwait, Iraq, Bosnia and Herzegovina and Turkey addressed the Council during its opening plenary meeting.

During the session the Governing Council considered seven reports and recommendations made by the Panels of Commissioners in the E2, E3, E4 and F1 categories of claims (annexes I-VII). The category E reports are concerned with corporate claims, and the category F report is concerned with Government claims for losses related to departure and evacuation costs or damage to physical property.

The following table shows the amounts of compensation claimed in the reports and the amounts awarded by the Governing Council:

Report	Amount of compensation claimed (United States dollars)	Amount of compensation awarded (United States dollars)
Second instalment of E2 claims	211 278 866	31 881 250
Second instalment of E3 claims	336 559 545	11 168 418
Third instalment of E3 claims	9 045 626	288 272
Fifth instalment of E3 claims	25 545 548	914 734
Sixth instalment of E3 claims	19 618 901	1 092 941
First instalment of E4 claims	277 461 218	128 258 259
Third instalment of F1 claims	39 534 792	14 653 766

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The Governing Council also considered the report of the Executive Secretary: summary of activities, covering the period from 19 November 1998 to 9 February 1999. The report covers the appointment of Commissioners, the processing of claims and the payment of approved claims.

The Governing Council discussed several issues relating to the processing and payment of claims, including a request for correction under article 41 of the Provisional Rules for Claims Procedure, and the issue of priority of payment and payment mechanisms.

The request for correction to the report and recommendations made by the Panel of Commissioners concerning the first instalment of E3 claims (approved at the thirtieth session of the Governing Council in December 1998) was made by the Government of Turkey on behalf of the claimant Enka Insaat Ve Sanayi A.S. Article 41 of the Provisional Rules for Claims Procedure provides that a request for correction to computational, clerical, typographical or other errors may be made to the Executive Secretary, who will report it to the Governing Council to decide whether any action is necessary on the request. Article 40 (4) of the Rules expressly prohibits appeals of Governing Council decisions approving panel reports and recommendations on procedural, substantive or other grounds. Before reporting a request for correction to the Governing Council, the Executive Secretary must determine whether it is a proper request within the scope of article 41. In this case the secretariat determined that the request of Enka amounted to an appeal on a substantive issue rather than a request for correction, and therefore notified Enka that no action pursuant to article 41 was warranted.

In the light of the presentation made by the Government of Turkey on this issue at the opening plenary meeting, the Governing Council reviewed and confirmed the current practice applied by the secretariat in the processing of requests for correction under article 41 of the Rules. The Council directed the secretariat to continue with this practice and requested that, in cases where the Executive Secretary decides that a request for correction is not properly made under article 41 of the Rules, the Governing Council still be informed of those requests through the report of the Executive Secretary: summary of activities, and also be informed, in the same report, of the action taken by the secretariat. The Council also emphasized that article 41 should not be interpreted in such a way as to allow an appeal on procedural, substantive or other grounds under its provision.

The Governing Council continued its discussion on the issue of priority of payment and payment mechanisms for the second phase of payment, due to commence, upon completion of the first phase, in July 1999. According to the payment mechanism set out in decision 17 of the Governing Council (made in 1993), individual claimants in categories A (claims for departure from Iraq or Kuwait), B (claims for serious personal injury or death) and C (claims for damages up to $100,000) have been accorded priority in the first phase of payment and paid an initial amount of up to $2,500 each. Payment of those initial amounts is expected to be completed in July 1999.

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The Governing Council will hold further informal meetings in the coming weeks on this issue, with a view to reaching a decision by the thirty-second session.

Finally, the Governing Council decided to hold its thirty-second session from 22 to 24 June 1999.

(_Signed_) Ambassador Hans J. HEINEMANN
President of the Governing Council

Annex I

Report and recommendations made by the Panel of Commissioners concerning the second instalment of E2 claims*

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* Previously issued as document S/AC.26/1999/6.

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Introduction

1. The Governing Council of the United Nations Compensation Commission (the "Commission") appointed the present Panel of Commissioners (the "Panel"), composed of Messrs. Bernard Audit (Chairman), José-María Abascal and David D. Caron, at its twenty-first session in 1996, to review claims filed with the Commission on behalf of corporations and other legal entities. This report contains the recommendations to the Governing Council by the Panel, pursuant to article 38 (e) of the "Provisional rules of claims procedure" (S/AC.26/1992/INF.1)(the "Rules"), 1/ concerning 178 claims submitted by corporations. Each of the claimants seeks compensation for damages arising out of Iraq's 2 August 1990 invasion and subsequent occupation of Kuwait.

2. The 178 claims under review by the Panel represent the second instalment of "E2" claims. These claims were selected by the secretariat of the Commission from among the entire group of "E2" claims on the basis of criteria established under the Rules. These include (a) the date of filing with the Commission, (b) the claimant's type of business activity, and (c) the type of loss claimed. A description of the claims is set out in chapter I below, followed in chapter II by the procedure used by the Panel in processing the claims.

3. The role and tasks of a panel of Commissioners, the applicable law and criteria, the liability of Iraq and a description of the applicable evidentiary requirements have been stated in detail in the Panel's first report. 2/ In accordance with this framework, three tasks have been entrusted to the Panel in the present proceedings. First, the Panel must determine whether the various types of losses put forward fall within the jurisdiction of the Commission and are thus, in principle, compensable. Second, it must verify whether the losses that are in principle compensable have in fact been incurred by a given claimant. Third, it must value those losses found to be compensable. These successive steps are described in chapters III, IV and V, respectively, followed by the Panel's recommendations.

I. THE CLAIMS

4. The 178 claims in this instalment for the most part allege losses sustained as a result of a general decline in business operations during the period of the invasion and occupation of Kuwait and in some instances after that period. Many, but not all such claimants, were operating in the tourism industry.

A. Categorization of the claims

5. The Governing Council has provided guidance on how to categorize the claims in this instalment for processing purposes. Article 17 of the Rules specifically provides for the categorization of claims by the secretariat. Article 38(a) of the Rules further states that "[i]n so far as possible, claims with significant common legal and factual issues will be processed together". The purpose of such grouping is to allow similar claims to be analysed in a consistent and effective manner.

6. Given the large number of claims in this instalment, and in keeping with the Rules, the Panel decided to further subdivide the claims according to industry type, the country or geographical location where the loss is stated to have occurred, and the place of incorporation or organization of the claimant. This was also justified by the fact that the impact of Iraq's invasion and occupation of Kuwait varied according to the geographic location of the various countries involved and their political stance vis-à-vis Iraq's actions. In many instances, the country where the loss is said to have occurred will be that where the claimant is organized, incorporated or maintains a presence. However, in some instances, claimants in this instalment are alleging they sustained losses in respect of a portion of their business conducted outside such a country.

B. Breakdown of the claims

7. From the perspective of the type of industry involved, the main distinction in the present instalment is between tourism and non-tourism claims. Claims are further subdivided according to the geographic area where the asserted loss was suffered.

1. Tourism claims

8. Many claimants have stated that, following Iraq's invasion and occupation of Kuwait, there was a consequential and substantial decline in

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the number of incoming tourists to the Middle East and surrounding regions in general, and to each of their countries of operation in particular. The claimants each seek compensation for losses allegedly suffered as a result of the ensuing decline in their business revenues. The following description of the claims summarizes the allegations made by the claimants.

(a) Cyprus

9. Eleven claimants from Cyprus are included in this instalment. They all seek compensation for losses incurred in their local businesses. These claimants are hotel owners, a tour operator and the holder and operator of a duty-free concession.

10. The Cypriot claimants generally assert that, at the time of Iraq's invasion and occupation of Kuwait, a large percentage of their clientele were incoming tourists from the United Kingdom. Several contend that, as a result of Iraq's invasion of Kuwait and the subsequent hostilities, the Government of the United Kingdom categorized Cyprus as being within the "danger zone" and issued warnings to potential tourists to cancel any travel plans to Cyprus. Some add that it was the existence of British military bases on Cyprus that placed Cyprus within the "danger zone". The claimants state that, in view of these circumstances, many tourists cancelled their pre-arranged holidays while other tourists delayed travelling to Cyprus pending the outcome of military operations, and that British tourists who were in Cyprus at the outbreak of the Allied Coalition military action, in January 1991, were repatriated to the United Kingdom. On the basis of these allegations, the claimants assert that the number of incoming tourists to Cyprus during the period 2 August 1990 to 2 March 1991 declined substantially. Hotel owners state that the occupancy levels in their establishments declined, causing a loss of revenue and profits. Some further state that prior to 2 August 1990 they had agreements with tour operators from the United Kingdom pursuant to which the tour operators had undertaken to fill a specified number of hotel rooms on an allotment basis, for a period including that of the invasion and occupation of Kuwait. These claimants assert that, as a result of Iraq's invasion of Kuwait, these contracts were cancelled by the tour operators due to security concerns for their clients, which resulted in lost revenues to the claimants.

11. Some of the Cypriot claimants also claim compensation for the decline in revenues derived from tourism-associated businesses such as restaurants, discotheques and car-hires.

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12. One Cypriot claimant is the licensee of two airport duty-free shops. This claimant states that approximately 95 per cent of its sales were to overseas tourists visiting Cyprus and that the invasion and occupation of Kuwait caused a reduction in the number of incoming flights and tourists to the island and consequently a reduction in its business. The claimant also asserts that, due to this adverse effect on its business, it was unable to afford the renewal fees for its licenses for the ports of Limassol and Larnaca, which resulted in the loss of its income-producing assets for a period of four years.

13. Some Cypriot claimants state that, after the cessation of hostilities, they were forced to offer their clients and tour operators reductions of up to 40 per cent on normally contracted room rates in order to re-establish the normal influx of tourists to Cyprus. These claimants seek compensation for the downturn in profits resulting from the reductions in prices they were forced to offer to clients.

(b) Egypt

14. This instalment includes 67 claims submitted by claimants in the Arab Republic of Egypt. All of these claims are for losses incurred locally; and the majority are from hotel owners and tour operators who state that, as a result of Iraq's invasion and occupation of Kuwait, the number of incoming tourists to Egypt declined significantly, thereby causing a corresponding decline in business revenues. The main reasons cited by the claimants for the decline in the number of incoming tourists are the proximity of Egypt to the area of conflict, the fear of escalation of the conflict and the disruption of air traffic lanes.

15. In addition to the hotel owners and tour operators, some claimants are transport providers whose primary source of income was derived from the supply of transportation to hotels, airports and tourist sites. Essentially, these claimants state the same facts as the hotel owners, namely, that the decline in the number of incoming tourists to Egypt during the period of the invasion and occupation led to a decline in their business revenues, for which they seek compensation. A few claimants also claim for losses associated with the lease of vessels and buses resulting from the decline in tourist passengers. One claimant seeks compensation for the loss sustained on the sale of a bus that it was purportedly forced to sell due to the depressed condition of the tourism industry.

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16. This instalment also includes one claimant incorporated in Germany who states that its primary activity was the organization of group tours to Egypt for its European clientele. The claimant states that its European clients cancelled pre-arranged trips to Egypt because of concerns about security, given Egypt's proximity to the area of conflict.

(c) Israel

17. The majority of Israeli claimants are hotel owners and tour operators seeking compensation for the downturn in tourism to Israel. All of these claimants state that the threat of scud missile launches against Israel, followed by actual missile attacks after 18 January 1991, and the risk that Israel might be drawn directly into the conflict, resulted in a significant decline in tourism to Israel.

18. While most of these claims are for a decline in business revenues sustained during the period 2 August 1990 to 2 March 1991, a number also are for losses incurred for various periods of time following 2 March 1991, ranging from one month to a year or more. The latter claims are generally based on the contention that it took some time for business activity to return to normal levels.

(d) Turkey

19. One claim in this instalment has been filed by a tour operator from the Netherlands who states that, as a result of Iraq's invasion of Kuwait, its business, which consisted primarily of organizing tours to Turkey, declined substantially. The increased risk of terrorist attacks against citizens of countries participating in the Allied Coalition forces and the proximity of Turkey to Iraq are cited as the reasons why clients cancelled proposed and confirmed vacations to Turkey.

(e) Morocco and Tunisia

20. Included in this instalment are a few claims from travel agencies and tour operators located in the United Kingdom who specialize in the organization of tours to Morocco and Tunisia. These claimants assert that their European clients cancelled proposed and confirmed tours to those two destinations, which resulted in a decline in the claimants' businesses. The claimants refer to government travel warnings to their citizens allegedly advising them not to travel to these countries due to security risks resulting from the situation in the Persian Gulf region.

(f) Mediterranean and Black Sea region

21. One claimant in this instalment operated a cruise ship, flagged in Liberia, in the Mediterranean and Black Sea region at the time of Iraq's invasion and occupation of Kuwait. The claimant asserts that, due to these events and the consequential fear of terrorist attacks against shipping concerns in those regions, it was forced to fully cancel its itinerary of 14 cruises to the Mediterranean and Black Sea scheduled for the period April 1991 to November 1991 and replace it with cruises to the Caribbean. The claimant seeks compensation for lost profits, including ticket revenue and on-board earnings, as well as for additional passenger food and port charges it sustained during the period April 1991 to November 1991.

(g) European countries

22. Several corporations from European countries, primarily tour operators and travel agencies, have claimed for business losses allegedly suffered as a result of Iraq's invasion and occupation of Kuwait. These claimants assert that during the period 2 August 1990 to 2 March 1991, people were generally reluctant to travel within Europe and elsewhere due to a fear that terrorist attacks against tourists would occur as a result of the situation in the Persian Gulf region. One claimant from the Netherlands specialized in organizing cultural and sporting tours to Europe for university and college students from the United States; this claimant alleges that all of its pre-arranged tours for the period 2 August 1990 to 2 March 1991 were cancelled.

23. One claimant from Germany seeks compensation for losses sustained because a credit card company refused to pay a Kuwaiti client's charges after the 2 August 1990 invasion of Kuwait. The claimant asserts that following that date all Kuwaiti accounts were frozen, so that the credit card company only paid the claimant the guaranteed amount. The claimant seeks compensation for the balance of the outstanding debt.

2. Non-tourism claims

24. Most of the non-tourism claims have been submitted by Israeli corporations for losses incurred in Israel itself. The remaining ones have been submitted by corporations from various countries for losses incurred in Kuwait and other countries in the Middle East. Most of the claims are for decline in business, and they include claims made by manufacturers of chemicals and other related products, transport companies, agribusiness

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concerns, and retail and service providers. Some of the claims are based on losses arising from contracts with Kuwaiti and Iraqi parties.

(a) Kuwait

25. Several claimants in this instalment, namely travel agents or hotels, are seeking compensation for the unpaid bills of Kuwaiti parties for services provided in Cyprus, Egypt and Germany prior to Iraq's invasion and occupation of Kuwait. One seeks compensation for unpaid accounts of Kuwaiti travel agents for customers who visited Cyprus; these unpaid accounts are dated from September 1987 to April 1993. Another seeks compensation for losses due to the failure of six Kuwaiti hotel guests to pay accounts dated from 15 August 1990 to 19 June 1991. A third seeks compensation for the unpaid account of a Kuwaiti client who stayed at its premises during July 1990.

26. One claimant, a Liechtenstein corporation in the business of media sales, asserts losses in connection with its business activities conducted in Kuwait. The claimant states that, at the time of the invasion of Kuwait, it provided advertising services to several leading magazines in that country on a "rolling" contractual basis and that, as result of the Iraqi invasion and occupation, these magazine companies were forced to close down and did not reopen until several months after the end of the occupation. The claimant further states that it provided advertising services on a regular basis to other clients in Kuwait who also were forced to close as a result of the invasion and occupation. The claimant seeks lost revenue and profits that it would have earned had those events not taken place.

27. One claimant from the United Kingdom seeks compensation for the loss of tangible assets in the form of sporting and leisure equipment, stating that the equipment disappeared from its premises in Kuwait during the period 2 August 1990 to 2 March 1991 as a result of looting by the Iraqi military forces.

(b) Iraq

28. One claimant states that it had a contract with the Iraqi State Organisation for Tourism to manage several hotels located in Basra and Baghdad in return for a fee. The claimant asserts that, as a result of Iraq's invasion and occupation of Kuwait, it was unable to continue

operating the hotels, and seeks the fee revenue for the unexpired period of the contract, namely until 31 March 1996.

29. A travel agency from the Netherlands states that prior to Iraq's invasion and occupation of Kuwait it had reserved and paid for, on behalf of clients, seats for travel on Iraqi Airways that were to be used during the period between 2 August 1990 and 2 March 1991. The claimant asserts that, because of the invasion, travel on the booked flights could not be undertaken and that it was unable to recover the prepaid amounts, for which it bore the cost.

(c) Israel

30. Claimants active in Israeli business sectors other than tourism, such as manufacturing, construction, retail sales, hospitals, accounting firms and cinemas, state that they were unable to continue operating their businesses or that they suffered a significant decline in revenue during the period of the invasion and occupation of Kuwait and, in some cases, for several months thereafter. Based on the specific factual patterns described by the claimants, these claims can be subdivided into three groups.

(i) Business interruption as a result of physical damage

31. One claimant states that its business was interrupted following material damage to its premises. This claimant is the proprietor of a retail centre that was under construction at the time it was hit by an Iraqi scud missile which, according to the claimant, destroyed the top two floors of the centre. This destruction in turn delayed the completion of the building and the subsequent opening of the centre by seven months. Although the claimant received compensation from the Government of Israel for the physical damage to the building, it states that this did not represent full compensation and therefore claims the balance. The claimant also seeks compensation for the loss of rent resulting from the delay in the opening of the centre.

(ii) General decline in business

32. The second group, comprising the majority of the Israeli non-tourism claims, is characterized by the allegation that threats made by Iraq against Israel, including that of using chemical weapons, followed by numerous scud missile launches between 18 January 1991 and 26 February

1991, had a disruptive effect on the Israeli economy in general and on the claimants' businesses in particular. The claimants generally state that the terror experienced in Israel during the period of the scud missile attacks, enhanced by the fear that the missiles might carry chemical weapons, caused people to stay confined to their homes or seek refuge in the security shelters provided by the Government, which resulted in a downturn in activity and revenues. Some businesses, such as retail outlets, claim that they could not obtain supplies of necessary stocks to operate normally during the relevant period. Other claimants assert that the threat generated by scud missiles after mid-January 1991 prevented their employees from attending work, making it impossible to maintain the regular level of services offered.

33. One claimant who produces computer equipment for export to the United States, Europe and other foreign markets asserts that during the period of Iraq's occupation of Kuwait, and for some time thereafter, many of its customers and potential customers were reluctant to order and purchase equipment from an Israeli company because of fears of possible delays in the delivery of the equipment due to Iraq's invasion and occupation of Kuwait. According to the claimant, the growth rate of its orders during the first and second quarters of 1991 was significantly lower than normal.

(iii) Specific measures of the Israeli Government affecting business

34. A number of non-tourism claimants, many of whom also potentially fall under the second group (general decline in business), refer to specific measures taken by the Government of Israel in response to the scud missile attacks, stating that those measures directly affected their businesses.

35. Some of these claimants are chemical and petrochemical companies located throughout Israel who state that they were forced to close down their manufacturing plants by specific order of the Government of Israel designed to prevent the risk of damage spreading, for example, by fire, if their factories were hit by a scud missile. Other claimants state that they were temporarily forced to cease operating because of a similar government order prohibiting them from storing or stockpiling dangerous and highly flammable raw materials at their premises.

36. Several claimants state that during the period of the invasion and occupation of Kuwait many of their employees were unable to report for work because of official restrictions implemented by the Government of Israel in the nature of curfew orders and border closures. As a result of these

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measures, employees could not travel to their places of employment, which caused a general decline in productivity. In particular, three of these claimants who operate in the agribusiness industry state that due to the resulting shortage of labour, crops could not be tended and harvested, with the ultimate consequence that they were destroyed or substantially damaged. Two of them specifically claim compensation for contract-related losses based on their inability to sell their crops to cooperatives under then-existing marketing agreements.

37. Other claimants in this group had contracts to provide transportation services for school children. These claimants state that their activities were interrupted during the period 18 January to 26 February 1991, following a government order closing schools out of concern for the security of the children.

(d) Egypt

38. Included in this instalment is one claim by an Egyptian entity seeking compensation for the failure of a French client, a travel agent, to pay a debt for services performed prior to the invasion and occupation of Kuwait, on the ground that the French client went into bankruptcy due to the invasion and occupation of Kuwait.

(e) Jordan

39. A Jordanian claimant seeks compensation for losses under contracts with entities in Iraq, Kuwait, Egypt and Saudi Arabia to provide transportation for passengers between Jordan and each of these countries.

40. Concerning contracts to transport passengers to and from Iraq and Saudi Arabia, the claimant states that as a result of Iraq's unlawful invasion and occupation of Kuwait, it could no longer perform these services because its buses were prohibited from entering both Iraq and Saudi Arabia.

41. Concerning Egypt, the claimant alleges that the main source of passengers for this route was Egyptian workers travelling between Iraq and Egypt via Jordan. The claimant asserts that a contract with an Egyptian transport company lost its value as three million Egyptian workers were expelled from Iraq following the invasion of Kuwait.

42. The claimant similarly claims under a contract to provide bus services between Jordan and Kuwait. While stating that the contract, which was signed in 1988, had not come into operation as of 2 August 1990, the claimant asserts that it was due to come into operation shortly after 2 August 1990, and that it would have been profitable. The claimant states that expulsion from Kuwait of some 300,000 Palestinians, following the occupation of Kuwait by Iraq, eliminated a large portion of potential passengers for this bus route and that, accordingly, the value of the contract was largely diminished.

(f) United Arab Emirates

43. One claimant, incorporated and carrying on business in the United Arab Emirates, was the sole handling agent at the Dubai International Airport where it provided airport handling and ground engineering services. The claimant was also the general sales agent for many airlines in Dubai and other Emirates, an activity for which it earned a commission on sales.

44. The claimant seeks compensation for services provided to military air forces involved in the conflict, such as the delivery of equipment and the provision of manpower, during the period August 1990 to February 1991. The claimant also seeks compensation for the cost of various services it provided to the United States Air Force without receiving any payment.

II. PROCEDURAL HISTORY

45. Pursuant to article 16 of the Rules, the Executive Secretary of the Commission reported the significant factual and legal issues raised by the claims in reports Nos. 20 and 21, dated 16 July 1997 and 8 October 1997 respectively. Pursuant to paragraph 3 of article 16, a number of Governments submitted their information and views on the Executive Secretary's reports. These responses were transmitted to the Panel pursuant to article 32, paragraph 1.

46. As required by Article 14 of the Rules, in order to assist the Panel in the verification process, the secretariat made a preliminary assessment of the claims received in order to determine whether or not they met the formal requirements established by the Governing Council in Article 14. Deficiencies identified were communicated to the claimants in order to give them the opportunity to remedy those deficiencies. 3/

47. In December 1997, the services of expert consultants in loss adjusting and accounting were retained to assist the Panel and the secretariat in the review and analysis of the claims. The secretariat, together with the expert consultants, undertook a preliminary review of all 178 claims in order to identify what additional information or documentation, if any, could potentially assist the Panel in properly verifying and valuing the claims. Pursuant to article 34 of the Rules, notifications were dispatched to each of the claimants in this instalment ("article 34 notifications"), in which the claimants were asked to respond to a series of standard and specific questions and to provide additional documentation.

48. The information provided by the claimants in response to the article 34 notifications was used in the verification of the claims, in the valuation of the losses sustained by the claimants and in the determination of the appropriate amount of compensation, if any, to be awarded to a given claimant.

49. The services of statisticians were also used to assist the secretariat and the Panel in the verification of certain claims in the instalment. The precise use made of statistical tools in the verification process is described in more detail in chapter V.

50. After the Panel had made the necessary determinations as to which claims fell within the jurisdiction of the Commission and which did not,

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members of the secretariat, together with expert consultants, undertook a mission to clarify responses to the article 34 notifications and to obtain additional information necessary for the verification and valuation of some of the claims within the jurisdiction of the Commission.

III. LEGAL ISSUES

51. In this chapter, the Panel considers issues that arise from two characteristics prevalent among the claims under review. First, most of the claims involve losses that occurred outside Kuwait or Iraq. Most of the claimants operated businesses that were physically located in other countries in the Middle East; others, although located in countries outside the Middle East, conducted operations within the region. Secondly, with a few exceptions, the claimants' business premises did not suffer any physical damage, nor did their business operations cease. Rather, the claimants maintain that, as a result of Iraq's invasion and occupation of Kuwait, they suffered a decline in their ongoing business operations and, consequently, sustained a loss of profits.

52. In its first report, the Panel had some opportunity to address the issue arising from the first characteristic above, in considering the impact of the "direct loss" requirement for a claimant operating construction projects in Saudi Arabia. Some aspects of the Panel's decision on that occasion are applicable to the claims under review. However, the claims presented in this instalment raise the issue of the compensability of losses incurred outside Kuwait or Iraq on a much broader scale. Accordingly, the Panel must elaborate on this issue in order to determine whether the claims fall within the jurisdiction of the Commission. Thereafter the Panel turns to the second issue, the compensability of losses for "decline in business".

A. Jurisdiction over losses outside Kuwait or Iraq and the requirement of directness

53. The Commission's jurisdiction over losses outside Kuwait or Iraq raises three related questions: first, whether there is a general restriction on the Commission's jurisdiction based on the location of the loss; secondly, what restrictions, if any, flow from the requirement that the loss be a direct consequence of Iraq's invasion and occupation of Kuwait; and, thirdly, the impact of intervening acts or events upon the compensability of the claims in question.

1. Absence of a general jurisdictional restriction based on the location of the loss

54. Security Council resolution 687 (1991) refers to "any direct loss or damage" resulting from Iraq's invasion and occupation of Kuwait, but does

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not specify where such loss or damage should have occurred. Similarly, the decisions of the Governing Council do not limit per se the Commission's jurisdiction in terms of the place where the loss or damage was suffered or, for that matter, where the event causing the loss took place. 4/ Accordingly, the Panel finds that the place where the loss or damage was suffered by the claimant is not in itself determinative of the Commission's competence. Nevertheless, as discussed below, some restrictions flow from the requirement that the loss be a direct consequence of the invasion and occupation of Kuwait.

2. The relationship of the location of the loss to the requirement of directness

55. Security Council resolution 687 (1991) requires that the causal link between the invasion and the loss be "direct." The Panel finds, as it did with respect to the 'arising prior to' clause, that the object and purpose of the Security Council's insertion of the phrase "direct loss" in resolution 687 (1991) was to limit the jurisdiction of the Commission. 5/ This limitation is understandable in view of the magnitude of liability that would result from providing compensation for any detriment wherever felt, by any person, which somehow can be related to the invasion and occupation of Kuwait.

56. While the text of the resolution provides no specific guidance as to what constitutes a "direct loss", the Governing Council has done so in several of its decisions, in particular, decisions 7 and 15. Paragraph 21 of decision 7 provides the seminal rule on the directness requirement for category "E" claims. That provision reads:

> "21. These payments are available with respect to any direct loss, damage, or injury to corporations and other entities as a result of Iraq's unlawful invasion and occupation of Kuwait. This will include any loss suffered as a result of:
>
> "(a) Military operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991;
>
> "(b) Departure of persons from or their inability to leave Iraq or Kuwait (or a decision not to return) during that period;

"(c) Actions by officials, employees or agents of the Government of Iraq or its controlled entities during that period in connection with the invasion or occupation;

"(d) The breakdown of civil order in Kuwait or Iraq during that period; or

"(e) Hostage-taking or other illegal detention."

57. For losses in Kuwait or Iraq to meet the requirement of directness, it very often will suffice for a claimant to show that the loss resulted from one of the five acts or circumstances listed in paragraph 21. In the case of losses suffered outside Iraq or Kuwait, however, the possible causal link with a specified act or circumstance in paragraph 21 may be quite extended. A threshold issue for several claims in this instalment is, therefore, whether paragraph 21 should be read to mean that "any loss" suffered, as a result of one of the five acts or circumstances, is direct no matter how many intermediate links may exist between the act or circumstance in paragraph 21 and the loss.

58. The Panel, noting that Security Council resolution 687 (1991) requires that all losses be direct, concludes that paragraph 21 could not and did not relax this requirement. Indeed, the first sentence of paragraph 21 reiterates this basic requirement of resolution 687 (1991). This chapeau emphasizes the fundamental limitation in resolution 687 (1991) within which the remainder of the paragraph must operate. Accordingly, the Panel finds that the phrase "any loss suffered as a result of" in the second sentence does not mean that any loss, however remote, connected to the specific circumstances described is to be regarded as a direct loss. Rather, the second sentence of paragraph 21 of decision 7 simply constitutes a finding by the Governing Council that the five circumstances described are themselves to be regarded as a "direct" consequence of the invasion and occupation, thereby establishing that a claimant whose loss is directly caused by one of the constituent acts does not need to establish the further link to the invasion and occupation.

59. When examining the directness requirement, the Panel first considers the applicability to the claims under review of any of the five enumerated acts or events described in paragraph 21. With particular reference to the decline in business claims in this instalment, the facts supporting the claims can only relate to subparagraph (a) of paragraph 21 of decision 7 referring to "military operations or threat of military action by either

side during the period 2 August 1990 to 2 March 1991". As the Panel has previously concluded, 6/ where the loss cannot be related to one of the acts or circumstances identified in paragraph 21 of decision 7, a special showing is required to demonstrate that the loss sustained was a direct consequence of Iraq's unlawful invasion and occupation of Kuwait. 7/ The Panel therefore first considers which geographical areas involved in the claims under review were affected by the circumstances or events, set out in paragraph 21(a). The Panel then considers whether a special showing exists for the remaining claims.

(a) The scope of "military operations or threat of military action" and the location of the loss

60. Both this Panel and the "F1" Panel have already considered the meaning to be given to the phrase "military operations or threat of military action by either side" with respect to losses occurring outside Iraq or Kuwait. 8/ The "F1" Panel has decided, in the context of a government's claim for evacuation costs of its citizens (primarily diplomats) from countries other than Iraq and Kuwait, that a direct link can be shown where "actual military operations" or "an actual - as opposed to speculative - threat of military action" existed against a country from which persons were evacuated. The "F1" Panel further stated, agreeing with the "C" Panel, that a claim based upon an incident occurring outside Iraq or Kuwait needs to be more fully substantiated in order to establish the necessary causal link between the invasion and occupation of Kuwait and the alleged loss. 9/

61. In considering the issue, the "F1" Panel took account of, inter alia, the range and use of Iraqi scud missiles during the period of Iraq's invasion, and the location of any military actions conducted by either Iraq or the Allied Coalition forces in countries other than Iraq and Kuwait. Based on its investigation, the "F1" Panel found that "military operations or the threat of military action" were directed by Iraq against Saudi Arabia and Israel, in addition to Kuwait and Iraq. For those reasons, the Panel decided that "the costs incurred by Governments in evacuating citizens from Saudi Arabia and Israel should be compensated on the same basis as those costs incurred by Governments in evacuating persons from Iraq or Kuwait"; in contrast, it did not award compensation for costs of evacuating citizens from other countries in the Middle East, including Turkey, Iran, and Syria. 10/

/...

62. Similarly, this Panel drew a distinction in its first report between claims for losses suffered in Kuwait and Iraq and elsewhere, noting that the further from the location of the actual invasion and occupation, the greater the evidence required from the claimant. 11/ As regards "military operations", the Panel observed that military operations outside of Kuwait and Iraq did not bring about the systematic and thorough damage inflicted by military operations in Kuwait or Iraq. It therefore concluded that in order to establish the requisite causal link to Iraq's invasion and occupation, claimants asserting losses arising out of "military operations" in a country other than Kuwait or Iraq "must make a specific showing that the loss or damage for which compensation is claimed resulted from a specific military event or events." 12/

63. Although the previous decisions of the Commission summarized in the preceding paragraphs focus primarily on the military operations of Iraq, the Panel notes that paragraph 21 of decision 7 refers to "military operations ... by either side." In the present instalment, Cypriot claimants point to the Allied Coalition's use of airbases on Cyprus as a factor in the decline of tourism to Cyprus. The Netherlands claim relating to Turkey, described in paragraph 19, presents a similar line of argument. These claims necessitate the Panel's consideration of the meaning of "military operations" in general and the scope of the military operations of the Allied Coalition forces in particular.

64. Military operations in the context of paragraph 21 refers to actual and specific military activities by Iraq in its invasion and occupation of Kuwait, or by the Allied Coalition in its efforts to remove Iraq's presence from Kuwait. The geographic scope of military operations corresponds to the zone of combat as circumscribed by the actions of either side. Such scope, for example, does not include remote locations utilized as staging areas for supplies and personnel or the airspace traversed when transporting such supplies and personnel.

65. The military operations of the Allied Coalition forces were directed at Iraqi forces in Iraq and Kuwait. The geographic scope of such operations thus includes Iraq, Kuwait and such immediately adjacent land territory, waters and airspace as were a necessary part of the conduct of such operations. Thus, the Panel found in its first report that the military operations of both Iraq and the Allied Coalition included for a time substantial portions of Saudi Arabia. In contrast, although aircraft operations were staged from airbases in southeastern Cyprus and southern Turkey, the Panel finds that neither staging area placed Cyprus or Turkey

/...

within the zone of military operations as that phrase is used in paragraph 21. In any event, it must be established that such "military operations" were the direct cause of the loss claimed.

66. In the context of the present claims, the Panel finds that the repeated launching of scud missiles by Iraq upon Israel beginning on 18 January 1991, and the assistance of Allied Coalition forces aimed at eliminating or defending against such attacks, constituted "military operations" within the meaning of paragraph 21 of decision 7. In contrast, military operations by either side were not conducted in the territories of Morocco, Tunisia, Egypt, Turkey and Cyprus.

67. As regards the threat of military action (as distinct from actual military operations), this Panel in its first report made several findings which are relevant to claims by corporations for loss or damage alleged to have occurred outside of Iraq or Kuwait. In particular, where a claimant seeks compensation for loss or damage resulting from a "threat of military action", 13/ a specific showing must be made that the loss or damage for which compensation is sought directly resulted from a "credible and serious threat that was intimately connected to Iraq's invasion and occupation" and was within the actual military capability of the entity issuing the threat, as judged in the light of the "actual theatre of military operations" during the period involved. 14/

68. It follows from the preceding that two cumulative criteria must be met to find a threat of military action by Iraq outside Iraq or Kuwait for the purpose of establishing the Commission's jurisdiction over a claim based on that threat. One is that a specific threat by Iraq must have been directed at that location; the other, that the target of the threat, if any, must have been within the range of Iraq's military reach. While application of these criteria to the claims under review is fully discussed in chapter IV, sections C and E, they operate in the following manner:

(a) In relation to Morocco and Tunisia, neither of these countries was the subject of a threat by Iraq and, in any event, they were well out of the range of Iraq's military reach;

(b) In relation to Egypt, Turkey and Cyprus, none of these countries was the subject of a specific threat by Iraq. Apart from Cyprus, most of the territory of these countries was outside the range of Iraq's capability; and

(c) In contrast, Israel was the subject of a serious and credible threat of military action followed by actual military attacks, and the threat and eventual attacks were intimately connected to Iraq's invasion and occupation of Kuwait. This Panel consequently finds, as the "F1" Panel did before, that an actual and credible threat was directed by Iraq at Israel. As further explained in paragraph 102, such a threat to Israel existed as of 15 January 1991, in advance of the actual military attacks. 15/

(b) Absence of other basis for directness

69. As regards those countries which were not the subject of military operations or threat of military action, the Panel now considers whether the directness requirement is met for the claims under review independently of the circumstances or events enumerated in paragraph 21 of decision 7. The Panel notes that the claims for decline in business outside Israel rest on the assertion that a general sense of danger led to a loss of tourism activity. Indeed, the Panel takes notice of the fact that such concern was felt in many parts of the world as a consequence of Iraq's invasion and occupation of Kuwait, and that the perception of danger was generally greater in regard to the countries of the Near and Middle East. However, this sense of danger did not involve a differentiated assessment of the various sources of risk. Often it resulted from concern with local unrest, perhaps sympathetic to, but nonetheless independent of, Iraq. Thus, for example, a United Kingdom travel advisory issued on 14 January 1991 concerning travel to Morocco and Tunisia only cautioned that travellers should take precautions against the possibility of civil disturbances. The Panel acknowledges that, given today's ease of transportation, open borders and array of weaponry, many parts of the world plausibly felt threatened during the period of Iraq's invasion and occupation of Kuwait. But it is the wide, indeed global, range over which such non-specific and widely diffused perceptions of threat are felt that makes them alone an inadequate basis for meeting the directness requirement for compensation under the Commission's jurisdiction. The Panel concludes that a general apprehension felt by visiting and potential tourists, even if supported in some instances by general government travel advisories, or understandable in the circumstances, does not establish directness independently of the circumstances or events enumerated in paragraph 21 of decision 7. The Panel therefore finds, for the claims in this instalment, no basis for directness outside of those circumstances described in paragraphs 60 to 68, as regards losses suffered outside Kuwait or Iraq.

3. The impact of intervening acts

70. Because the Panel in the present instalment is dealing with losses suffered outside Iraq and Kuwait, the possibility that a loss was caused by factors other than Iraq's invasion and occupation of Kuwait deserves special consideration. It is recognized in legal theory that any single event may be the product of a chain of causation involving many different events. An intervening act is an act which, as part of the chain of causation, may be said to have produced the loss complained of and which occurs after the wrongful act in question. Several of the claims under review raise the question of whether the presence of the act of a third person or other force in the chain of causation relieves Iraq from liability under Security Council resolution 687 (1991).

71. In particular, the Government of Israel, in response to the Iraqi attacks on Israeli territory, took a number of actions restricting normal activities, such as the imposition of curfews and orders directed at chemical plants, schools, and other establishments. (See paragraphs 34-37.) The decisions of the Governing Council do not address this situation, and the Panel must therefore, in accordance with article 31 of the Rules, examine "other relevant rules of international law" on the subject. 16/

72. Under generally accepted principles of law, intervening acts of a third person that are a reasonable and foreseeable consequence of the original act do not break the chain of causation, and hence do not relieve the original wrongdoer of liability for losses which his acts have caused. 17/ Thus, in the present context, if it can be said that an intervening act was a reasonable and foreseeable response to Iraq's unlawful invasion and occupation of Kuwait, the resulting loss, despite such intervening act, will remain directly attributable to Iraq. These general principles are applied in chapter IV.

B. Compensability of losses for decline in business

73. The second issue before the Panel is whether a general reduction in the revenue of an ongoing business, which suffered a decline in operations but no physical destruction or temporary closure, constitutes a loss eligible for compensation. Finding that it is, the Panel next considers the principles regarding the period of time over which compensation may be awarded. Lastly, the Panel identifies the basic valuation principles applicable to this type of loss.

1. Compensability in principle

74. While Governing Council decision 9 provides guidance with respect to the compensability of business losses covered by Security Council resolution 687 (1991), it does not specifically address losses for decline in business. Decision 9 refers to three types of business losses which are eligible for compensation: (a) contract losses or past business practice; (b) losses relating to tangible assets; and (c) losses relating to income producing properties. More specifically, these provisions relate to losses (including lost profits) resulting from cancelled or frustrated contracts, damage to tangible property and damage to business concerns that were destroyed or had to temporarily close down and had to be rebuilt. In contrast, the claims under review largely involve businesses that continued to operate throughout the relevant period, but which suffered a decline in revenue.

75. However, decision 9 does not purport to identify all types of losses that may be compensable under resolution 687 (1991). Rather, paragraph 3 of the decision explicitly recognizes that other types of losses may be eligible for compensation, and further states that the Commissioners may identify principles relevant to such losses.

76. On this basis, the Panel finds that losses resulting from a decline in operations are compensable. Decision 9, in allowing compensation for the temporary closure of a business, recognizes that decline in revenue, the main effect of such closure, is compensable. Paragraph 16 of decision 9, in defining income-producing properties to include "various kinds of businesses whose value is determined not only by the value of their individual assets but also by the greater value they possess due to their capacity to generate income", emphasises that compensation should reflect the full economic value of an affected going concern. In addition, paragraph 19 of decision 9 formulates valuation principles to be applied to a loss of profits sustained through the destruction of income-producing properties, which refer to the projection in the future of past performance, a method that is equally applicable to losses resulting from a decline in business. (See paragraph 83.)

77. The preceding analysis based on decision 9 is confirmed by accepted principles of international law regarding State responsibility. The Draft Articles on State Responsibility by the International Law Commission, for example, provide in relevant part that "compensation covers any

economically assessable damage sustained ..., and, where appropriate, loss of profits". 18/

78. The Panel concludes that, in principle, compensation should be awarded to a claimant for the profits which, in the ordinary course of events, it would have been expected to earn and which were lost as a result of a decline in business directly caused by Iraq's invasion and occupation of Kuwait.

2. Compensation period

79. In its first report this Panel interpreted the Governing Council's decisions to mean that compensation for lost profits may be awarded for the period between the cessation of military operations and the time when the claimant reasonably could have resumed production at pre-invasion levels. 19/ Thus, compensation was awarded for so long as the business was affected by a destruction of assets or a disruption of activities, which itself was the direct result of Iraq's unlawful invasion and occupation of Kuwait.

80. Applying this reasoning to the claims under review, the Panel finds that a decline in business should be compensable for the period during which the claimants were unable to carry on business at levels prevailing before military operations began. Insofar as Israeli claimants are concerned, compensation may be awarded for a decline in business suffered from the time when the threat of military action first materialized, i.e., 15 January 1991, as determined under paragraph 102.

81. The Panel also recognizes that in some instances the full resumption of business operations was not likely to have taken place immediately upon the cessation of military operations, i.e., 2 March 1991. Consequently, the Panel determines that compensation should, in those instances, be allowed for a further period of time. The specific criteria for the determination of this "secondary period" of compensation are discussed in greater detail in chapter V, "Valuation of compensable claims."

3. Valuation principles

82. As stated above in paragraphs 74 to 76, decision 9 formulates valuation principles for earnings or profits which could reasonably have been expected. The Panel finds that the principles thus outlined for the valuation of future profits of a business which was destroyed or

temporarily closed are applicable, mutatis mutandis, to the valuation of losses due to a decline in business activity.

83. Paragraph 19 of decision 9 provides in relevant part:

> "In principle, the economic value of a business may include loss of future earnings and profits where they can be ascertained with reasonable certainty .... The method of a valuation should therefore be one that focuses on past performance rather than on forecasts and projections into the future. Compensation should be provided if the loss can be ascertained with reasonable certainty based on prior earnings or profits."

84. Two valuation principles thus emerge from decision 9: that the valuation of the loss of future earnings and profits be based on past performance rather than on forecasts, and that compensation should only be provided if the loss can be ascertained with reasonable certainty. The detailed application of these principles is discussed in chapter V, "Valuation of compensable claims".

IV. COMPENSABILITY OF THE CLAIMS PRESENTED

85. The Panel in this chapter examines the compensability of the claims before it in the light of the relevant Governing Council decisions and the conclusions reached above. As already noted, the location of the loss has particular significance for this issue; therefore, it is from that same perspective that the claims are examined.

A. Claims relating to Kuwait or Kuwaiti parties

1. Contracts with Kuwaiti parties

86. Several claimants seek compensation for the non-payment of amounts owed to them by Kuwaiti parties, as described in paragraphs 23 and 25.

87. Two other claimants seek compensation for losses allegedly sustained as a result of an inability to perform specific contracts with Kuwaiti parties for media sales and transportation services, as described in paragraphs 26 and 42, respectively.

88. With regard to losses relating to breaches of contract, frustration of contract, or impossibility of performance of a contract to which Iraq was not a party, paragraph 10 of decision 9 provides in relevant part that "... Iraq is responsible for the losses that have resulted from the invasion and occupation of Kuwait".

89. As regards the claimants seeking compensation for non-payment of amounts owed by Kuwaiti parties, several conclusions drawn by the Panel in its first report apply. Unlike the situation of contracts with Iraq, decision 9 requires claimants to provide specific proof that the other party's failure to perform was the direct result of Iraq's invasion and occupation of Kuwait. The failure should not, for example, stem from a debtor's economic decision to use available resources to ends other than the discharge of its contractual obligation, for such an independent decision would be the direct cause of the non-payment and the resulting loss would therefore not be compensable. Adequate proof that a contracting party's inability to perform resulted from Iraq's invasion and occupation of Kuwait would include a showing that performance was no longer possible, for example because the contracting party, in the case of an individual, was killed or physically impaired, or in the case of a business, ceased to exist or was rendered bankrupt or insolvent, as a result of Iraq's invasion and occupation of Kuwait. 20/

90. Applying those principles to the claims for the non-payment of accounts by a Kuwaiti party, the Panel finds that the claimants have all failed to establish that the non-payments were a direct result of Iraq's invasion and occupation of Kuwait.

91. As regards the claim for media sales losses, the Panel finds the portion of the claim based on specific contracts is not adequately substantiated. Concerning the remaining portion, which is for expected revenue from future sale of services, the claimant failed to submit financial documentation or other evidence sufficient to establish more than an expectation of possible future business. Accordingly, the Panel finds that no compensation may be awarded in respect of the claim.

92. As regards the claim for transportation services between Jordan and Kuwait, the Panel finds that the claimant has failed to provide satisfactory evidence that the conditions precedent, which would have caused its contract with the Kuwaiti entity to come into force, have been fulfilled and has failed to substantiate the amount of its loss, if any.

2. Tangible assets in Kuwait

93. Applying paragraphs 12 and 13 of decision 9, the Panel found in its first report that insofar as the claimant can prove that it departed from Kuwait during the relevant period and consequently lost assets present in Kuwait as of August 1990, the claimant will have established the requisite causal link between the loss of those assets and Iraq's invasion and occupation of Kuwait. [21]/

94. The Panel finds that the claimant from the United Kingdom referred to in paragraph 27 has established that the assets for which it seeks compensation were present in Kuwait during the relevant period, that the damage to the assets was a direct result of the invasion and occupation of Kuwait, and that the claim is compensable.

B. Contracts with Iraqi parties

95. Three claimants described in paragraphs 28, 29, and 40, seek compensation for losses in respect of contracts with Iraq. [22]/ They invoke paragraph 9 of decision 9 on the grounds that continuation of the contracts became impossible after 2 August 1990 due to Iraq's unlawful invasion and occupation of Kuwait.

96. With regard to contract losses as a result of frustration of contract or impossibility of performance, decision 9 provides:

> "9. Where Iraq did not breach a contract to which it was a party, but continuation of the contract became impossible for the other party as a result of Iraq's invasion and occupation of Kuwait, Iraq is liable for any direct loss the other party suffered as a result, including lost profits. In such a situation Iraq should not be allowed to invoke force majeure or similar contract provisions, or general principles of contract excuse, to avoid its liability."

97. The Panel finds that in cases where a contract with Iraq was ongoing as of 2 August 1990 and the contract became impossible to perform as a direct result of Iraq's invasion and occupation of Kuwait, the claimant is entitled to profits it could reasonably have earned on the contract had it been able to complete performance. In evaluating claims for such lost profits, the Panel requires specific and persuasive evidence of ongoing and expected future profitability.

98. Concerning the claim for the impossibility to perform contracts with the Iraqi State Organisation for Tourism, described in paragraph 28, the Panel finds that the claimant has met its burden of demonstrating that it became impossible for the claimant to continue performance of its contractual obligations as a result of the invasion, and the claimant is entitled to lost profits that it could have earned on the contracts. As of 2 March 1991, however, performance of the contracts became impossible because of the UN trade embargo, and under paragraph 6 of decision 9, the associated losses, in principle, are not compensable. However, paragraph 6 goes on to state that compensation may be provided to the extent that Iraq's invasion and occupation of Kuwait constituted a cause of loss which is separate from the trade embargo. The Panel finds that Iraq's invasion and occupation of Kuwait was a separate and distinct cause of the loss for the recovery period (as explained in paragraph 140, infra) and that consequently the loss is compensable until 30 June 1991.

99. The claim described in paragraph 29 is based on the impossibility of the claimant's clients utilizing booked tickets on Iraqi Airways during the period 2 August 1990 to 2 March 1991. The Panel finds that, notwithstanding any possible effects of the trade embargo, it would have been unreasonable, in view of the circumstances prevailing in Iraq at the time, to expect the holder of a ticket to stop over in Baghdad as was required by the terms of the ticket. Consequently, the Panel finds that

the claimant's loss, even though it may also have been attributable to the effect of the trade embargo, was a direct result of Iraq's invasion and occupation of Kuwait.

100. In relation to the contracts between a Jordanian bus company and Iraq, described in paragraph 40, the Panel finds that the claimant has established the impossibility of performing its obligations to transport passengers between Jordan and Iraq during the period of 2 August 1990 to 2 March 1991. However, after 2 March 1991, the Panel finds that the claimant's continued inability to perform its obligations under the contract was due to the effect of the trade embargo and consequently, under decision 9, losses for the period after 2 March 1991 are not compensable.

C. Claims involving Israel

101. The claims filed by Israeli corporations are nearly all for losses resulting from business disruption associated with the invasion and occupation of Kuwait. 23/ The Panel in chapter III found that military operations and threats of military actions were directed at Israel; it remains to determine the exact dates during which those events took place. The Panel then sets out its other findings and conclusions concerning the compensability of the alleged losses in Israel.

1. The periods of threat of military action and military operations

102. After its invasion of Kuwait on 2 August 1990, Iraq made several specific threats to attack Israel. These threats against Israel were specifically linked by Iraq to the Allied Coalition forces undertaking action to force the withdrawal from Kuwait by the occupying Iraqi forces. 24/ Since the deadline set by Security Council resolution 678 (1990) for such withdrawal was 15 January 1991, the Panel determines that as of 15 January 1991, when such deadline expired, and until the cease-fire resolution came into effect, there existed a credible and serious threat of military action directed at Israel that was intimately connected to Iraq's invasion and occupation of Kuwait. Consequently, the Panel determines that losses suffered in Israel from 15 January to 2 March 1991, which were the direct result of this threat, are compensable.

103. From 18 January 1991 until the cease-fire resolution came into effect, Israel was subjected to 40 scud missile attacks launched indiscriminately throughout the country. This, the Panel finds, constituted actual "military operations" as defined in paragraph 21 of

decision 7. Consequently, any losses suffered in Israel from 18 January 1991 to 2 March 1991 as a direct result of these military operations are compensable.

104. As explained in paragraph 140, the compensation period may extend beyond that of military threat or operations to the extent that the claimant's business could not resume operating at its normal level immediately upon the date when the cease-fire resolution came into effect.

2. Other findings and conclusions

105. A further issue to be considered is whether the actions of the Government of Israel in imposing curfews, prohibiting the stockpiling of certain dangerous substances, closing down certain factories, and closing schools could be said to constitute intervening events that sever the causal connection to Iraq's invasion and occupation of Kuwait. Applying the principles of reasonableness and foreseeability set forth in paragraph 72, the Panel finds that those actions taken by the Government of Israel were implemented as part of a government's duty to protect its citizens, in particular against indiscriminate and life-threatening attacks on the civilian population. Being therefore reasonable and foreseeable in the circumstances, those measures do not sever the connection between the invasion and occupation of Kuwait and the losses.

106. Similarly, in relation to claims for decline in tourism-related businesses, the Panel finds that the decisions of tourists not to travel to Israel during the period of military operations or threat of military action were foreseeable reactions and that they, as such, do not break the chain of causation.

D. Claims involving the United Arab Emirates

107. As described in paragraph 44, one claimant from the United Arab Emirates seeks compensation for services provided to military forces, in particular, the United States Air Force. Governing Council decision 19 states that "the costs of the Allied Coalition forces including those of military operations against Iraq, are not eligible for compensation". Therefore, inasmuch as no member of the Allied Coalition forces could obtain compensation for the cost of such services if it had paid for them, the Panel finds that this claimant likewise cannot obtain compensation for the same costs.

E. Claims involving other countries

108. The remaining claimants in this instalment seek compensation for losses suffered in Cyprus, Egypt, Jordan, Tunisia, Morocco, Turkey, the Mediterranean and Black Sea region and Europe. As stated in chapter III of this report, these claimants must show that the particular country in which the loss was suffered was the subject of a credible and serious threat of military action by either side, within the meaning of paragraph 21 of decision 7, during the period 2 August 1990 to 2 March 1991, in order for the claims to be compensable. For the reasons set forth in the following paragraphs, the Panel finds that none of the claims alleging losses suffered in the preceding countries meets this requirement.

1. Cyprus

109. The Panel notes that there were British bases on the island of Cyprus that were utilized during the period of, and in relation to, the invasion and occupation of Kuwait. However, for the reasons stated in paragraph 64 and 65, such activities do not constitute "military operations" within the meaning of paragraph 21 of decision 7.

110. Cyprus was also within reach of Iraq's military capacity, at least in terms of the long-range scud missiles believed to be in Iraq's possession. However, Cyprus was not the subject of any specific threat of military action by Iraq. Likewise, Cyprus was never the subject of a travel advisory warning. 25/

111. The Panel finds that decisions by tourists not to travel to Cyprus and the repatriation of tourists by European travel agents therefore constituted independent decisions for which Iraq is not liable.

112. Accordingly, the Panel concludes that the claimed losses are not "losses suffered as a result of" "military operations or the threat of military action by either side" within the meaning of paragraph 21 of decision 7 and consequently are not a direct result of Iraq's invasion and occupation of Kuwait as required by Security Council resolution 687 (1991).

2. Egypt

113. Egypt was a member of the Allied Coalition and contributed troops that were involved in military operations against Iraq. As such, Egypt was the subject of the general hostility expressed by Iraq toward those

countries that were part of the Allied Coalition forces. However, Iraq does not appear to have directed specific threats against Egypt, other than statements against those who participated in or assisted the Allied Coalition forces in general. Moreover, except for a small portion of its northeastern border, Egypt was not within the range of Iraq's military capacity. Accordingly, the Panel finds that there was no credible and serious threat of military action, as defined above, against Egypt.

114. Accordingly, the Panel concludes that the claimed losses are not "losses suffered as a result of" the "threat of military action" within the meaning of paragraph 21 of decision 7 and consequently are not a direct result of Iraq's invasion and occupation of Kuwait as required by Security Council resolution 687 (1991).

3. Jordan

115. One claimant from Jordan seeks compensation for losses in respect of transportation contracts it had entered into with entities in Saudi Arabia and Egypt. (See paragraphs 40-41.) The Panel finds that the claimant has not provided sufficient evidence in support of these parts of its claim.

4. Tunisia

116. Two claimants from the United Kingdom maintain that there was, during the period of the invasion and occupation, an increased risk that tourists visiting Tunisia, particularly those coming from countries which were part of the Allied Coalition, would be the subject of terrorist attack. The claimants assert that some sectors of the Tunisian population overtly supported Iraq and its president, as manifested in civil demonstrations.

117. The Panel finds that Tunisia was not the subject of any threat by Iraq and that Tunisia was not within the range of Iraq's military capability. The perceived threat of terrorism, as may have been fostered by the existence of local demonstrations, does not constitute a threat of military action by Iraq and therefore does not come within the purview of paragraph 21 of decision 7. 26/ Accordingly, the Panel concludes that the claimed losses are not "losses suffered as a result of" the "threat of military action" within the meaning of paragraph 21 of decision 7 and consequently are not a direct result of Iraq's invasion and occupation of Kuwait as required by Security Council resolution 687 (1991).

5. Morocco

118. The claimants identified in paragraph 20 likewise seek compensation for losses suffered as a result of the decline of their tourist business in Morocco, asserting the same arguments as with regard to Tunisia.

119. Morocco was a member of the Allied Coalition forces and, in its capacity as such, contributed troops to the Allied Coalition. After the commencement of the Allied military operations on 16 January 1991, some governments issued travel advisories warning their citizens to exercise care if travelling to Morocco, due to civil unrest. 27/ However, Morocco was not within Iraq's actual military capability as measured by the range of the missiles in Iraq's possession.

120. Accordingly, the Panel concludes that the claimed losses are not "losses suffered as a result of" the "threat of military action" within the meaning of paragraph 21 of decision 7 and consequently are not a direct result of Iraq's invasion and occupation of Kuwait as required by Security Council resolution 687 (1991).

6. Turkey

121. One claimant from the Netherlands, who organizes tours to Turkey, seeks compensation for loss of profits resulting from the decline in that part of its business.

122. Turkey contributed forces to the Allied Coalition, of which it was a member, and amassed forces along its border with Iraq. Turkey also allowed the utilization of its airbases for air strikes by the Allied Coalition forces against Iraq and co-operated in other respects with the effort to remove Iraqi forces from Kuwait, notably by closing off an oil pipeline used for transporting oil from Iraq to international markets. As explained in paragraphs 64 and 65, such activities do not constitute "military operations" within the meaning of paragraph 21 of decision 7.

123. As a result of the assistance thus provided by Turkey to the Allied Coalition, there was speculation that Turkey would be attacked by Iraq. However, other than the general threats made against all members of the Coalition, at no stage during the relevant period did Iraq make a specific threat of military action against Turkey. Further, apart from a small section of its southern border, Turkey was outside the range of Iraq's

military capability. Accordingly, any threat to Turkey cannot be considered to be credible and serious.

124. Accordingly, the Panel concludes that the claimed losses are not "losses suffered as a result of" "military operations or the threat of military action by either side" within the meaning of paragraph 21 of decision 7 and consequently are not a direct result of Iraq's invasion and occupation of Kuwait as required by Security Council resolution 687 (1991).

7. Mediterranean and Black Sea region

125. As stated in paragraph 21, one claimant seeks compensation for losses associated with the cancellation of its entire itinerary of 14 cruises to the Mediterranean and Black Sea. The ports of call at which the proposed cruises would dock included Istanbul and Izmir, in Turkey; Odessa and Yalta, in the Ukraine; Athens, Mykonos, Santorini, Crete and Rhodes, in Greece; and Casablanca and Tangier, in Morocco.

126. While there may have been general concern for the safety of shipping in the Mediterranean Sea during the period of the invasion and occupation of Kuwait, it could not be said that the region was the subject of a specific credible threat by Iraq, and this is even less the case with the Black Sea. Further, the fact that, as stated by the claimant, the proposed route of the cruise was close to the Israeli coast is not sufficient to establish a credible and serious threat of military action within the meaning of paragraph 21 of decision 7.

8. Europe

127. Europe was outside the military capability of Iraq. Accordingly, the Panel concludes that the claimed losses described in paragraph 22 are not "losses suffered as a result of" the "threat of military action" within the meaning of paragraph 21 of decision 7 and consequently are not a direct result of Iraq's invasion and occupation of Kuwait as required by Security Council resolution 687 (1991).

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V. VALUATION OF THE COMPENSABLE CLAIMS

128. Having determined which claims are compensable, the Panel addresses some considerations relevant to the ascertainment of the appropriate compensation, if any, to be awarded for each eligible claim. These considerations involve the procedures used to verify the claims and the methodology implemented to assess the amount of compensation to be awarded.

A. Verification procedures

129. The Panel used a number of means to verify the losses claimed and to determine the appropriate amount of compensation. Given the complexity of the valuation issues, the large number of claims under review and the volume of supporting documentation underlying the claims, at an early stage of the proceedings the Panel requested expert advice pursuant to article 36 of the Rules. This advice was provided by loss adjusting and accounting consultants and, with respect to certain aspects of the tourism claims, also by statisticians.

130. Article 35, paragraph 3 of the Rules states that claims by corporations and other legal entities "must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and amount of the claimed loss." It is the responsibility of the Panel under article 35, paragraph 1, to determine "the admissibility, relevance, materiality and weight of any documents and other evidence submitted."

131. As explained in chapter II, questions were sent to the claimants pursuant to article 34 of the Rules in order to obtain additional documentation and information needed for a proper verification and evaluation of the claims, such as audited financial statements, detailed management accounts, and monthly revenue and expenses. The Panel also requested the secretariat to gather tourism statistics for the Middle East and data on the range and use of Iraqi scud missiles during the period of Iraq's invasion and occupation of Kuwait.

132. Under the Panel's supervision and guidance, the loss adjusters and accountants reviewed all the documents and other information submitted by the claimants and the data derived from research by the secretariat. To the extent applicable, generally accepted loss adjusting and accountancy procedures were used in verifying and valuing the losses. In addition, the consultants undertook cross-checks of the documentation submitted, in order to test the accuracy of the amounts claimed.

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133. The Panel provided specific instructions to the expert consultants with respect to the time period during which an economic loss sustained by the claimants would in principle be compensable. Because the type and level of available evidence varied significantly, the Panel also instructed the consultants to use adjustment factors in evaluating the weight and sufficiency of the evidence presented in support of the value of the claims. The precise guidelines are discussed in paragraph 152.

134. With respect to tourism claims for which sufficient statistical information was available, the Panel was also assisted by statisticians who worked independently of the loss adjusters and accountants. It should be emphasized that statistical analysis was a further verification tool used to identify claims that warranted closer scrutiny by the Panel; the primary verification and valuation processes remained those applied by the loss adjusters and accountants. The statistical tools took the form of four benchmarks or measures which were derived by applying widely accepted methodologies to the claimants' responses to the article 34 questions, and also to data obtained from regional tourism industry boards. The claims identified by these statistical measures as falling outside the benchmarks were subjected to further examination in order to ascertain the reasons why they did so. Where necessary, the loss adjusters and accountants were again consulted. In all cases, either satisfactory explanations for the claim having fallen outside of the benchmarks were found, or the claim was already subject to adjustment for a deficiency in evidence.

135. The Panel carefully reviewed the calculations and recommendations of the expert consultants with regard to each claim and, to the extent it was satisfied with the results, applied them in assessing the amounts awarded. As appropriate, the Panel exercised its discretion in assessing the amount of compensation that should be awarded. The Panel's use of expert consultants in this manner is consistent with the previous practice of the Commission as well as the established practice of other international claims tribunals and commissions. 28/

B. Valuation method

136. The Panel hereafter specifies the time period for which lost profits are compensable and articulates the method used to calculate the claimant's loss.

1. Compensation period for lost profits

137. The Panel determined the time period during which any loss of profits sustained by claimants would be considered in principle compensable ("compensation period"). The award of compensation in an individual case was subject to the claimant having provided sufficient proof that a loss was actually suffered during that period.

138. As previously determined, the Israeli claimants were subject to a credible and serious threat of military operations as of 15 January 1991, and to military operations as of 18 January 1991, and these circumstances lasted until 2 March 1991. Accordingly, for purposes of the quantification of the losses claimed, the Panel determines that this six-week period, between 15 January 1991 and 2 March 1991, is the primary period during which compensation will be awarded (i.e., "primary compensation period").

139. The full resumption of business activities would not necessarily have taken place immediately upon cessation of military operations; there may have been a period of time during which those events could have had a continuing effect on the business of a claimant. Notably, in the case of hotels and tour operations, one could reasonably predict that a period of several weeks or months would elapse before normal activities resumed, since most tourists book tours and make other travel arrangements well in advance. Consequently, the Panel must determine as appropriate a further period of time during which a loss of profits sustained is compensable (i.e., a "secondary compensation period" or a "recovery" period).

140. In order to ascertain the secondary compensation period for tourism claims, the Panel determined the average date after the cessation of military operations at which the claimants' business revenue first reached or exceeded projected revenue. Having found that such period extended until 30 June 1991, the Panel considers that this span of four months after 2 March 1991 is a reasonable period for the tourism related claimants to resume normal operations, and that any loss of profits suffered during this period is compensable.

141. The secondary compensation period was relevant to cases where the claimant demonstrated a loss in the primary period and had shown that its tourism related business continued to be affected after 2 March 1991. Compensation for the secondary period was only recommended, however, when, taking the entire period as a whole, a net loss against projected revenue was found. If the secondary period showed no net loss, then no

compensation was recommended for that period, even though there may have been isolated months of losses offset by profits in other months.

142. A few non-tourism related claimants also submitted claims for periods extending beyond 2 March 1991. For such claims, the compensation period, if appropriate, was determined by the Panel on a case by case basis. The guiding principle followed is that losses are compensable until the point where the claimant's business could reasonably have been expected to return to normal levels.

143. In any event, for all claims considered by the Panel, the compensation awarded never exceeded the amount of the claim nor was compensation awarded for a period of time that extended beyond the period during which the claimant asserted the business was affected by the hostilities.

2. Calculation methods for the various types of losses

(a) Loss of profits

144. The vast majority of the compensable claims in this instalment sought compensation for lost profits. In keeping with the principles set forth by the Governing Council in decision 9, the Panel required the amount of profits lost during the compensation period to be ascertainable with reasonable certainty.

145. In order to ensure consistency as well as equality of treatment between claimants in similar situations, claims were grouped by industry types (i.e., hotels, travel agents, transport operations, manufacturers, agribusinesses and others). In evaluating a claimant's loss, generally accepted principles of accounting and loss adjusting were applied. In general, the valuation was performed in five main steps. Agribusiness claims, however, required a special method of valuation.

(i) General method

146. Step one: projection of revenues. Firstly, revenue for the compensation period was projected from historical monthly data obtained from the claimants. Given the seasonality of the tourism industry and the limited length of the compensation period (being, at most, five and one-half months), monthly data were considered necessary in order to measure, with reasonable accuracy, the amount of lost revenue sustained by

the claimants. Actual revenue reported for the compensation period was then deducted from the projected revenue to arrive at the lost revenue for the compensation period. This process was repeated, where applicable, for the secondary compensation period.

147. Where only annual data were available or where sufficient monthly data were not available to perform a valid projection, annual data for the last unaffected year were used as the basis for the projection of revenue for the compensation period. 29/ The "last unaffected year" is the last fiscal year prior to the year when the claimant asserts it was first affected by Iraq's invasion of Kuwait.

148. Where 18 to 36 months of historical monthly data were available, the Panel considered that the projections calculated on the basis of monthly data adequately incorporated an inflation factor. In instances where the claimant only had annual records or had insufficient monthly records to perform a valid projection of revenue for the compensation periods, and these records were stated in Israeli shekels, the Panel concluded that the use of annual data from earlier years as a basis for the projection of revenue, without taking into account the level of inflation in Israel at the time, would create a distortion. To avoid such a result, the Panel, taking into account economic data, made an adjustment for inflation.

149. Step two: factoring of variable costs other than wages. Once the lost revenue for the compensation period was determined, the historical operating costs of the business were analysed to identify the variable costs saved by the claimant as a consequence of the reduction in, or absence of, operations. This variable cost was expressed as a percentage of revenue, which, when applied to the lost revenue, resulted in a figure representing the lost revenue net of the variable costs.

150. Step three: specific analysis of wage costs. Where possible, wage costs were subject to a specific and more detailed analysis to account for the fact that in many businesses, while certain wage costs will be saved as the level of activity diminishes, others will be largely unaffected. In the case of hotels, the former would include the wages of seasonal staff employed during the high season, while management salaries would fall into the latter category. Where the factoring of wage costs could not be so refined, however, those costs were deemed to be totally variable, and subject to the standard variable cost estimation outlined in paragraph 149.

151. Step four: calculated amount. Lost revenues as determined in step one were reduced by variable costs and wage costs that were not incurred as a result of the decline in business, to arrive at the amount of lost profits for the period. Where the claimant had argued that the business was affected beyond 2 March 1991, the above step was repeated to calculate the loss for the secondary compensation period.

152. Step five: adjustment for evidentiary deficiencies. Lastly, the aggregate loss for the primary compensation period and the secondary compensation period (where relevant) was subject to a further adjustment based on the sufficiency of the evidence submitted. The verification of the claims revealed significant differences in the evidence available from claimant to claimant. After discussions with the expert consultants as to the level and type of evidence which claimants in the industries in question usually are able to produce, the Panel established guidelines setting a range of adjustment factors to be applied to the loss calculated by the method set out above. These guidelines were based upon other things, whether particular documentation, alone or together with other information, was considered sufficient evidence of the amount of a particular loss. The guidelines were then applied when examining the evidence actually presented in support of a given claim to arrive at the final recommended amount.

(ii) Agribusiness claims

153. The preceding method was not appropriate for the valuation of the three agribusiness claims for lost production, described in paragraph 36. These claimants had engaged an independent claims assessor to assist them in the preparation of the claims. The assessor reported that physical inspections and surveys of the claimants' plantations had been undertaken to determine the extent of the loss. This loss was then reportedly priced at the market value of the particular crop to arrive at the claimed amounts. The assessor's reports were reviewed, underlying documentation was requested and received, and the claimed losses were adjusted for potential overstatements and for losses occurring beyond the compensation period.

(b) Contract and contract-related claims

154. The eligible claims for contract losses were valued by computing what each claimant could have expected to earn under the terms of the contract had its continuation not been rendered impossible. Where applicable, the

cost savings brought about by the interruption were deducted in order to arrive at the total lost profit. The lost profit was then apportioned over the period during which it would have been earned under the contract. Only amounts that fell due within the compensation period were recommended for award. For this category of claims, the compensation period was determined on a case by case basis. (See paragraph 142.)

C. Currency exchange rate and interest

155. In this section, the Panel determines the exchange rate to be applied to claims where the losses are measured in currencies other than United States dollars, and the date from which interest will accrue. In keeping with decisions of previous panels, this Panel selects the date of the loss as the appropriate date on which the exchange rate is to be applied for non-contractual losses. The date when the loss occurred depends on the character of the loss. The claims for decline in business in this instalment concern losses that were suffered over an extended period of time. Consistent with the findings in its first report, 30/ the Panel selects the mid-point of the period during which the loss occurred as the date on which the exchange rate is to be applied to calculate the recommended amount. Concerning the appropriate rate of exchange to be used, the Panel applies the average of the monthly commercial rates available during the period of the loss, as evidenced by the United Nations Monthly Bulletin of Statistics.

156. With respect to the claim for the loss of tangible assets, described in paragraph 27, the Panel selects 2 August 1990 as the date of the loss and applies the prevailing rate of exchange on that date. 31/

157. With respect to the date from which interest will accrue for all compensable claims, in accordance with decision 16 of the Governing Council, the Panel selects the date when the loss occurred. In keeping with the applicable date on which the exchange rate is to be applied, the date when the loss occurred is the mid-point of the period during which the loss occurred.

D. Claims preparation costs

158. In a letter dated 6 May 1998, the Executive Secretary of the Commission advised the Panel that the Governing Council intends to resolve the issue of claims preparation costs at a future date. Accordingly, the Panel takes no action with respect to claims for such costs at this time.

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VI. RECOMMENDATIONS

159. Based on the foregoing, the Panel recommends that the amounts set out below be paid in compensation for direct losses suffered by the claimants as a result of Iraq's unlawful invasion and occupation of Kuwait:

Submitting country	UNCC claim number	Claimant	Amount claimed			Amount recommended (US$)
			Currency a/	Amount	Amount (US$) b/	
Cyprus	4000108	Top Hotels Ltd.	£C	202,946	458,117	0
Cyprus	4000143	Adams Beach Hotel/Adamos Ioannou & Sons Ltd.	£C	680,000	1,534,989	0
Cyprus	4000144	LMK-Lamanko Ltd.	£C	40,104	90,528	0
Cyprus	4000147	Golden Arches Hotel	£C	318,700	719,413	0
Cyprus	4000149	Navarria Hotel	£C	340,300	768,172	0
Cyprus	4000150	Bertha White Arches Apartments	£C	156,119	352,413	0
Cyprus	4000152	Marina Hotel (Ayia Napa) Ltd.	£C	159,000	358,916	0
Cyprus	4000153	Ros Estates Ltd.	£C	482,755	1,089,740	0
Cyprus	4000154	Amathus Navigation Co. Ltd.	£C	758,060	1,711,196	0
Cyprus	4000156	Panktoris Duty Free Shops Ltd.	US$	400,000	400,000	0
Cyprus	4000166	Galaxy Tours Ltd.	£C	4,732	10,682	0
Egypt	4002688	International Travel Bureau of Egypt	US$	700,982	700,982	0
Egypt	4002690	Tarot Garranah Tours	LE	6,130,175	3,065,088	0
Egypt	4002691	Scarabee Travel Agency	US$	170,602	170,602	0

Submitting country	UNCC claim number	Claimant	Amount claimed			Amount recommended (US$)
			Currency a/	Amount	Amount (US$) b/	
Egypt	4002692	Moon River Tours Co.	US$	1,076,770	1,076,770	0
Egypt	4002697	Egyptian Riviera Tours	US$	140,300	140,300	0
Egypt	4002698	Uni Travel	US$	149,634	149,634	0
Egypt	4002699	Amarco Tours	US$	866,000	866,000	0
Egypt	4002700	Shams Transport and Tourism	LE	12,549	6,275	0
Egypt	4002701	Seti First Travel Co.	LE	5,000,000	2,500,000	0
Egypt	4002702	Watania Tours SAE	US$	89,559	89,559	0
Egypt	4002703	Zamalek Nile Cruises	US$	1,104,101	1,104,101	0
Egypt	4002704	Cosmos Tours	US$	972,000	972,000	0
Egypt	4002705	Titi Tourism & Transport Co.	US$	65,757	65,757	0
Egypt	4002706	Golden Eagle Tours	US$	8,000	8,000	0
Egypt	4002707	Aqua Tours	US$	150,000	150,000	0
Egypt	4002708	Oberoi Nile Cruises (Shehrayar & Shehrazad)	US$	1,238,862	1,238,862	0
Egypt	4002709	Osiris Travel Agency	US$	77,965	77,965	0
Egypt	4002711	Cairo Sheraton Hotel & Casino	US$	8,537	8,537	0
Egypt	4002713	Nout Tours	LE	1,253,156	626,578	0
Egypt	4002714	Sherry Nile Cruises	US$	779,315	779,315	0

Submitting country	UNCC claim number	Claimant	Amount claimed			Amount recommended (US$)
			Currency a/	Amount	Amount (US$) b/	
Egypt	4002716	Nile Co. for Hotels & Tourism (Oasis Hotel)	US$	1,924,842	1,924,842	0
Egypt	4002719	Semiramis Inter-Continental Hotel	LE	11,820,000	5,910,000	0
Egypt	4002721	Windsor Palace Hotel (Alexandria)	US$	121,213	121,213	0
Egypt	4002722	Rose Hotel	US$	44,570	44,570	0
Egypt	4002724	Nawrous Tours and Transport Co.	LE	75,532	37,766	0
Egypt	4002725	New Group Travel (NGT)	US$	35,938	35,938	0
Egypt	4002726	Eastmar Travel	US$	3,765,760	3,765,760	0
Egypt	4002727	Telestar Travel	US$	587,720	587,720	0
Egypt	4002728	Spring Tours	LE	5,364,564	2,682,282	0
Egypt	4002845	Hotel Concorde	LE	431,521	215,761	0
Egypt	4002924	Hotel Akhetaton Louxor (Bella Donna)	LE	3,442,591	1,721,296	0
Egypt	4002927	Floating Boat "Marhaba"	LE	3,179,025	1,589,513	0
Egypt	4002930	Sharabi Nile Cruise Co.	LE	1,268,427	634,214	0
Egypt	4002931	Fathy Hasan Baloul/Hilwan Floating Hotel (Travel Group Co.)	LE	111,800	55,900	0
Egypt	4002932	Master Cruise Bing/Magid Nabil Iryan	LE	698,016	349,008	0
Egypt	4002933	St. George Hotel	US$	177,312	177,312	0
Egypt	4002934	Misr Nile Cruise	US$	350,043	350,043	0

Submitting country	UNCC claim number	Claimant	Amount claimed			Amount recommended (US$)
			Currency a/	Amount	Amount (US$) b/	
Egypt	4002937	High Life Cruise Co.	LE	3,132,518	1,566,259	0
Egypt	4002938	Theba Company for Floating Hotels	US$	64,653	64,653	0
Egypt	4002939	Travco Nile Cruise Lines Co.	US$	1,099,189	1,099,189	0
Egypt	4002940	Liberty Nile Cruise (Nile Empress)	US$	320,621	320,621	0
Egypt	4002941	Happy Land Hotel	US$	250,000	250,000	0
Egypt	4002942	New Continental Hotel	LE	740,000	370,000	0
Egypt	4002943	Zamzam Co. for Floating Hotels	US$	1,892,137	1,892,137	0
Egypt	4002944	Mena Co. for Resorts and Hotels "Menaville"	LE	3,000,000	1,500,000	0
Egypt	4002946	Hotel Manial Palace	LE	2,651,836	1,325,918	0
Egypt	4002947	Tonsi Hotel	LE	236,660	118,330	0
Egypt	4002954	Hilton Fayrouz Village	LE	1,796,676	898,338	0
Egypt	4002955	Egyptian Co. for Floating Hotels (Nile Romance)	LE	6,457,065	3,228,533	0
Egypt	4002956	Indiana Hotel	LE	172,191	86,096	0
Egypt	4002957	Nile Bride Nile Cruises	US$	1,058,300	1,058,300	0
Egypt	4002958	Sindbad Tourism Co.	LE	800,000	400,000	0
Egypt	4002960	Al Waha Corp. for Touristic & Hoteleries Investments	LE	390,000	195,000	0

Submitting country	UNCC claim number	Claimant	Amount claimed			Amount recommended (US$)
			Currency a/	Amount	Amount (US$) b/	
Egypt	4002961	Imperial Cruises Co.	US$	462,394	462,394	0
Egypt	4002962	Egyptian Co. for Floating Hotels (Nile Beauty)	LE	4,252,199	2,126,100	0
Egypt	4002963	El Salam Village	US$	876,989	876,989	0
Egypt	4002965	Presidential Nile Cruises	US$	820,000	820,000	0
Egypt	4002966	Tiran Village	US$	203,721	203,721	0
Egypt	4002968	Shalakani Tours	US$	1,910,408	1,910,408	0
Egypt	4002969	Hotel Meridien Le Caire	US$	1,379,395	1,379,395	0
Egypt	4002970	Le Meridien Heliopolis	US$	487,950	487,950	0
Egypt	4002971	The Legend Nile Cruising Co. Ltd.	US$	1,052,000	1,052,000	0
Egypt	4002972	Presidential Nile Cruises (Nile Emperor)	US$	560,000	560,000	0
Egypt	4002973	The Princess Nile Cruising Co.	US$	385,000	385,000	0
Egypt	4002974	Cairo Marriott Hotel	LE	10,000,000	5,000,000	0
Egypt	4002975	Shedwan Tourism Village	LE	880,179	440,090	0
Egypt	4003038	Pyramids Nile Cruise & Hotels Co.	US$	3,183,404	3,183,404	0
Germany	4000373	Acora Hotel Apartments	DM	14,274	9,138	0
Germany	4000484	Helios Reisen GmbH	DM	2,479,600	1,587,452	0
India	4000670	Oberoi Hotels Pvt. Ltd.	US$	661,843	661,843	312,621

Submitting country	UNCC claim number	Claimant	Amount claimed			Amount recommended (US$)
			Currency a/	Amount	Amount (US$) b/	
Israel	4000237	Trans-Global Travel Ltd.	US$	186,750	186,750	69,033
Israel	4000238	Yofi Tours Israel Ltd.	US$	320,000	320,000	32,630
Israel	4000239	Jerusalem Omaryah Hotel Co. Ltd.	US$	1,486,157	1,486,157	434,133
Israel	4000240	Unitravel Ltd.	US$	180,000	180,000	23,911
Israel	4000241	Isram South Wholesale Tours & Travel	US$	924,190	924,190	0
Israel	4000242	Astoria Hotels Ltd	US$	156,995	156,995	8,508
Israel	4000243	Coral Beach Eilat Ltd.	FF	925,345	176,525	153,859
Israel	4000245	Palm Beach Hotel Ltd.	US$	630,200	630,200	44,862
Israel	4000247	Isropa Nazarene Tours	US$	168,341	168,341	0
Israel	4000249	Kenes Organisers of Congresses & Tour Operators Ltd.	US$	204,003	204,003	0
Israel	4000250	Ganei Hamat Hotel Ltd.	NIS	3,574,942	1,749,849	170,475
Israel	4000251	Dan Hotels Corp. (trading as Hotel Dan Panorama Tel Aviv)	US$	1,619,800	1,619,800	377,916
Israel	4000252	Dan Hotels Corp. Ltd. (trading as Dan Hotel Tel Aviv)	US$	2,149,800	2,149,800	720,154
Israel	4000253	Dan Hotels Corp. Ltd. (trading as Dan Carmel Hotel)	US$	437,800	437,800	356,869

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Submitting country	UNCC claim number	Claimant	Amount claimed			Amount recommended (US$)
			Currency a/	Amount	Amount (US$) b/	
Israel	4000254	Accadia Ltd. (trading as Dan Accadia Hotel)	US$	475,200	475,200	123,790
Israel	4000255	King David Ltd. (trading as King David Hotel)	US$	2,370,700	2,370,700	102,698
Israel	4000256	Jerusalem Ceasar Hotel	US$	696,781	696,781	135,690
Israel	4000258	Moriah Hotels Ltd.	US$	1,645,000	1,645,000	750,705
Israel	4000259	Israel Petrochemical Enterprises Ltd.	US$	3,949,850	3,949,850	2,482,471
Israel	4000260	Ceasar Tiberias Hotel	US$	1,942,959	1,942,959	298,376
Israel	4000261	Dan Hotels Corp. Ltd. (trading as Hotel Dan Panorama Haifa)	US$	494,900	494,900	110,579
Israel	4000262	Avia Hotels Ltd.	NIS	312,750	153,084	16,621
Israel	4000263	Nazareth Hotel	US$	318,162	318,162	0
Israel	4000264	Hotel Cosmopolitan (1971) Ltd.	US$	2,031,500	2,031,500	2,031,500
Israel	4000265	Cosmopolitan Hotel (Ramada Continental Tel Aviv)	US$	924,805	924,805	238,146
Israel	4000266	Quiet Beach Hotel	US$	1,321,155	1,321,155	321,242
Israel	4000313	Bickel Flowers Ltd.	US$	193,700	193,700	161,513
Israel	4000317	Eshcolot Yehuda Tour 87	US$	14,615	14,615	0
Israel	4000318	Tour Bus Ltd.	US$	180,431	180,431	126,007

Submitting country	UNCC claim number	Claimant	Amount claimed			Amount recommended (US$)
			Currency a/	Amount	Amount (US$) b/	
Israel	4000319	Isralift (Industries) 1972 Ltd.	US$	550,000	550,000	0
Israel	4000320	Sightseeing Drive Yourself Ltd.	US$	90,000	90,000	0
Israel	4000324	Hotel Saint George International Jerusalem	US$	1,243,600	1,243,600	0
Israel	4000326	Dafna Hotel Ltd.	US$	132,000	132,000	7,183
Israel	4000329	Assuta Ltd.	NIS	1,171,000	573,177	578,843
Israel	4000330	Amico Tours Ltd.	US$	98,800	98,800	0
Israel	4000331	Nazareth Transport & Tourism Co. Ltd.	US$	906,460	906,460	98,125
Israel	4000336	Oil Refineries Ltd.	US$	3,312,410	3,312,410	1,788,467
Israel	4000337	Eshet Tourist Services Ltd.	US$	70,930	70,930	0
Israel	4000339	Ein Gedi Guest House Ltd. Partnership	US$	1,016,592	1,016,592	420,384
Israel	4000340	MNSR Hotel Management Ltd.	US$	382,060	382,060	382,060
Israel	4000342	GB Tours Ltd.	NIS	2,848,198	1,394,125	51,462
Israel	4000395	Dannie's Tours Ltd.	US$	121,050	121,050	0
Israel	4000397	Tiberias Hot Springs Co. Ltd.	NIS	4,657,435	2,279,704	227,412
Israel	4000398	Tar Hemed Ltd. Travel Touring Co.	US$	28,740	28,740	0
Israel	4000399	Vitalgo Textile Works Ltd.	US$	1,362,000	1,362,000	154,725

Submitting country	UNCC claim number	Claimant	Amount claimed			Amount recommended (US$)
			Currency a/	Amount	Amount (US$) b/	
Israel	4000400	Readymix Industries (Israel) Ltd.	US$	1,692,519	1,692,519	1,447,119
Israel	4000401	Electrochemical Industries (Frutarom) Ltd.	US$	2,777,418	2,777,418	2,032,385
Israel	4000402	King Solomon Palace Hotel Eilat Ltd.	US$	2,688,000	2,688,000	670,257
Israel	4000406	Tel Aviv Hilton Ltd.	US$	6,500,000	6,500,000	753,244
Israel	4000407	Shemesh Jerusalem Ltd. Kikar Zion Hotel	US$	1,088,000	1,088,000	0
Israel	4000408	Netanya Hotel Des Six Jours Ltd.	US$	330,802	330,802	2,971
Israel	4000410	Sport Hotel Partnership Eilat	US$	1,087,000	1,087,000	196,941
Israel	4000411	Riviera Hotel/Isrotel Hotel Management Ltd.	US$	625,000	625,000	105,591
Israel	4000415	Superjet Tours Ltd.	US$	126,628	126,628	22,185
Israel	4000417	Masi'Ei Kol Gil Ltd.	NIS	118,884	58,191	10,703
Israel	4000418	Dali Fashion Two Thousand Ltd. (Lev Cinemas)	US$	330,304	330,304	0
Israel	4000419	Tour Nof Ltd.	US$	275,000	275,000	5,546
Israel	4000420	Bay Heart Ltd.	NIS	4,813,789	2,356,235	495,140
Israel	4000421	Moriah Dead Sea Spa Hotel Ltd.	US$	1,245,000	1,245,000	748,737
Israel	4000422	Jordan River Hotel, Ganei Hadar Tourism Enterprises Ltd.	US$	4,224,976	4,224,976	106,154

Submitting country	UNCC claim number	Claimant	Amount claimed			Amount recommended (US$)
			Currency a/	Amount	Amount (US$) b/	
Israel	4000423	Medina Tours (Israel) Ltd.	US$	252,900	252,900	40,452
Israel	4000425	Lannet Data Communications Ltd.	US$	1,843,000	1,843,000	0
Israel	4000426	Moriah Eilat Resort Hotel Ltd.	US$	476,000	476,000	288,268
Israel	4000429	Gadot Petrochemical Industries Ltd.	US$	190,328	190,328	0
Israel	4000430	Lagoona Hotel Ltd.	US$	1,229,000	1,229,000	171,567
Israel	4000431	Vegetable Growers Association Ltd.	US$	2,286,701	2,286,701	2,265,106
Israel	4000436	Moviley Naharia Ltd.	NIS	140,000	68,527	0
Israel	4000438	Moriah Teberias Hotel Ltd.	US$	400,000	400,000	76,651
Israel	4000439	Ron Beach Hotel Ltd.	US$	450,000	450,000	72,003
Israel	4000440	Shulamit Gardens Hotel	US$	1,867,378	1,867,378	615,684
Israel	4000441	Ganei Menorah Hotel	US$	186,644	186,644	1,953
Israel	4000442	Hotel Eyal and Nurit Co. Ltd.	US$	693,000	693,000	146,472
Israel	4000443	HL Tours Ltd.	US$	120,000	120,000	48,421
Israel	4000444	Eilat Caesar Hotel Ltd.	US$	1,603,388	1,603,388	302,142
Israel	4000445	Moriah Tel Aviv Hotel Ltd.	US$	1,541,000	1,541,000	1,200,518

Submitting country	UNCC claim number	Claimant	Amount claimed			Amount recommended (US$)
			Currency a/	Amount	Amount (US$) b/	
Israel	4000504	National Flower Growers Association - Agricultural Cooperative Society Ltd.	US$	7,830,985	7,830,985	5,665,874
Israel	4000505	Tadmor Hotel	US$	64,079	64,079	7,676
Israel	4000507	Arieh Shasha Transporters Ltd.	US$	150,739	150,739	65,200
Israel	4000508	Peltours Travel and Tourism Ltd.	US$	1,600,000	1,600,000	436,707
Israel	4000509	Jerusalem Herzl Hotel Association	US$	3,600,000	3,600,000	195,803
Israel	4000510	Nof Ginosar-Hotel	US$	620,000	620,000	45,251
Israel	4000754	Somekh Chaikin	US$	975,000	975,000	138,733
Israel	4000755	Abadi Yosef & Simha Ltd.	NIS	187,058	91,560	4,580
Israel	4001102	Dizengoff Centre (founded by PILZ) Ltd.	US$	115,000	115,000	26,502
Israel	4001103	Chen Enrico Corp.	US$	283,528	283,528	73,980
Jordan	4002626	Jordan Express Tourist Transport Co.	JD	6,264,068	9,519,860	50,542 c/
Liberia	4001137	Princess Cruise Lines Inc.	US$	18,928,000	18,928,000	0
Liechtenstein	4001177	La Regie Libanaise de Publicite Internationale	US$	453,201	453,201	0
Netherlands	4001188	Koecklare BV Riverside Apartments	f.	35,323	20,058	0
Netherlands	4001442	K-Tours BV	f.	123,953	70,388	0
Netherlands	4001548	Aksoy Reizen	f.	388,000	220,329	0

Submitting country	UNCC claim number	Claimant	Amount claimed			Amount recommended (US$)
			Currency a/	Amount	Amount (US$) b/	
Netherlands	4001551	European American Travel BV	f.	60,186	34,177	0
Netherlands	4001558	Cross Country Travels Hillegom BV	f.	44,850	25,468	25,468
United Arab Emirates	4001750	Dubai National Air Travel Agency (DNATA)	US$	4,750,000	4,750,000	0 d/
United Kingdom	4002000	Tunisian Travel Bureau Limited	£ stg.	100,297	190,679	0
United Kingdom	4002128	Thomson Travel	US$	5,419,421	5,419,421	0 c/
United Kingdom	4002370	British Sub Aqua Club	US$	25,668	25,668	5,754

Notes to table of recommendations

a/ Currency codes: £C (Cyprus pound), LE (Egyptian pound), FF (French franc), DM (deutsche mark), NIS (new shekel), JD (Jordanian dinar), f. (Netherlands guilder), £ stg. (pound sterling), and US$ (United States dollar). Terminology Bulletin No. 343: Currency Units (ST/CS/SER.F/343) (United Nations, New York (1991)).

b/ For claims originally expressed by the claimant in currencies other than United States dollars, the secretariat has converted the amount claimed to United States dollars based on August 1990 rates of exchange as indicated in the United Nations Monthly Bulletin of Statistics, or in cases where this exchange rate is not available, the latest exchange rate available prior to August 1990. This conversion is made solely to provide an indication of the amount claimed in United States dollars for comparative purposes. In contrast, the date of the exchange rate that was applied to calculate the recommended amount is described in paragraphs 155 and 156.

c/ As regards UNCC claim No. 4002626, compensation of US$50,542 has been awarded for losses in relation to contracts with Iraq for transportation services. However, no compensation has been awarded for claimed losses based upon contracts to provide transportation services between Jordan and Saudi Arabia and Egypt, due to insufficient evidence. No compensation has been awarded for claimed losses for transportation services between Jordan and Kuwait, because the claimant has not provided satisfactory evidence that certain conditions precedent were fulfilled and has failed to substantiate the losses. Consideration of other claims by the same claimant (claim No. 4005970) for losses in respect of a contract to transport tourists within Jordan has been deferred until a later instalment, when similar issues will be considered.

d/ As regards UNCC claim No. 4001750, no compensation has been awarded for costs in connection with the operations of the Allied Coalition forces due to the non-compensability of such costs. Consideration of other claims by the same claimant (claim No. 4005971) seeking compensation for the loss of operating earnings due to the suspension of flights and the loss of travel agency-related earnings in Dubai has been deferred until a later instalment when such issues will be considered.

e/ As regards UNCC claim No. 4002128, no compensation has been awarded for the claim due to the jurisdictional factor of no direct loss. Consideration of other claims by the same claimant (claim No. 4005969) relating to additional fuel costs, additional insurance costs, and additional costs due to rerouting of flights, has been deferred until a later instalment when such issues will be considered.

Geneva, 16 December 1998

(Signed) Mr. Benard Audit
Chairman

(Signed) Mr. José-María Abascal
Commissioner

(Signed) Mr. David D. Caron
Commissioner

Notes

1/ S/AC.26/1992/10.

2/ S/AC.26/1998/7 ("E2(1) report"), paras. 38-48.

3/ Five claims for which compensation has been recommended have not rectified all formal deficiencies identified by this process. However, taking into account the claim and all other supporting documents, the Panel is of the opinion that these deficiencies are not material.

4/ Paragraph 21 of Governing Council decision 7 (quoted in paragraph 56) provides that a direct loss "will include any loss suffered as a result of" one of the constituent acts or events described in subparagraphs (a) through (e). Two acts or consequences described therein ([b] and [d]) refer to the location of the immediate events or circumstances which caused the loss but not the location where the loss was suffered. In contrast, the other three ([a], [c] and [e]) make no reference to either the location where the event causing the damage took place or where the loss was felt.

5/ See E2(1) report, para. 72.

6/ Ibid., paras. 108 and 156.

7/ The Panel also notes that the use of the word "include" in paragraph 21 preceding the list of circumstances presumed to establish a direct link to the invasion and occupation of Kuwait, indicates that the enumeration of circumstances is not exhaustive. Decision 15, paragraph 6, indeed, adds that there "will be other situations where evidence can be produced showing claims are for direct loss ... as a result of Iraq's unlawful invasion and occupation of Kuwait."

8/ "Report and recommendations made by the Panel of Commissioners concerning part one of the first instalment of claims by governments and international organizations (category "F" claims)" (S/AC.26.1997/6) ("F1(1) report"), paragraphs 94-96.

9/ F1(1) report, para. 94 (agreeing with the holding of the Panel in the First "C" report, p. 13).

10/ Ibid., para. 96; see also, para. 40.

11/ E2(1) report, paras. 253; 157-163.

12/ Ibid., para. 157.

13/ As the Panel found in its first report, although decision 7 does not define "threat", the drafting history indicates that the phrase should be

/...

strictly interpreted in terms of its geographic scope (citing second working paper of Governing Council). Ibid., para. 160. The drafting history further indicates that, in using the phrase "threat of military action", the Governing Council intended that only losses which resulted from "threats that were highly credible in the light of actual military operations" were to be compensable. Ibid. para. 161.

14/ Ibid., paras. 163, 161. The ordinary meaning of the words "threat of military action" requires that the threat "meet a minimum threshold of seriousness," gauged with reference to, inter alia, the level of military action threatened, and the capability and credibility of the entity issuing the threat. Accordingly, a threat by Iraq beyond the range of its military capabilities and which is not highly credible in the light of actual military operations does not meet "the minimum threshold of seriousness." Ibid., para. 159.

15/ Unlike that of Saudi Arabia, the entire territory of Israel was subject to military action or the threat of military operations, given the small geographic size of Israel and its proximity to Iraq.

16/ In the absence of a specific customary rule of international law regarding intervening acts, the Panel refers to general principles of law. (Article 38(1)(c), Statute of the International Court of Justice.)

17/ See, for example, B. Cheng, General Principles of Law as Applied by International Courts and Tribunals (London, Stevens & Sons, 1953), pp. 249-53. See also, A.M. Honoré, "Causation and Remoteness of Damage", in A. Tunc (ed.), International Encyclopedia of Comparative Law, vol. XI: Torts (part 1)(1983), pp. 7-78 to 7-79. The concept is sometimes expressed as the principle that foreseeable intervening forces will not supersede the defendant's responsibility (i.e., they are not a "superseding cause"). See W.L. Prosser, Handbook of the Law of Torts (St. Paul, West Publishing Co., 1971), pp. 273, 278.

18/ Report of the International Law Commission on the work of its forty-eighth session, Draft Articles on State Responsibility, article 44(2), Yearbook of the International Law Commission, 1996, vol. II, Part Two.

19/ E2(1) report, para. 247.

20/ Ibid., para. 145.

21/ Ibid., para. 148.

22/ As the Panel has already found, the Governing Council used the word "Iraq" in decision 9 to mean the Government of Iraq, its political subdivisions, or any agency, ministry, instrumentality or entity (notably public sector enterprises) controlled by the Government of Iraq. E2(1) report, para. 116.

23/ One claimant is seeking compensation for both physical damage to its premises as well as a decline in its business that occurred as a result thereof. (See paragraph 31.) The Panel determines that while physical damage is in principle compensable, as is the loss of turnover as a result thereof, the claimant in this instance has not provided sufficient evidence upon which to value either claim.

24/ In an interview on 27 December 1990, President Saddam Hussein stated: "If aggression were to take place, we should assume that Israel has taken part in it. Therefore, without asking any questions, we will strike at Israel. If the first strike is dealt to Baghdad or the front, the second strike will target Tel Aviv." (Mark Grossman, Encyclopedia of the Persian Gulf War (Santa Barbara, ABC-CLIO, 1995), p. 151.) At a press conference of Mr. Tariq Aziz, Iraq's then minister of foreign affairs, in Geneva on 9 January 1991, when asked the question, "Mr. Foreign Minister, if the war starts in the Middle East, in the gulf, will you attack Israel?," Mr. Aziz answered, "Yes, absolutely. Yes." (Mark Grossman, op. cit., p. 401. The same statement is quoted by Israel in a Letter dated 28 January 1991 from the Permanent Representative of Israel to the United Nations addressed to the Secretary-General, (S/22160/Rev.1).)

25/ None of the many travel advisories issued by the British Foreign and Commonwealth Office during the period of 3 January to 2 March 1991 warned against travel to Cyprus. Typical of travel advisories regarding Cyprus during this period was the advisory of 12 January 1991, which stated,

> "We see no reason for travellers to Egypt, Turkey, Cyprus or other countries in the region [i.e., Morocco, Greece, Oman, Libya] to change their plans in the light of recent developments."

26/ Cf. United Kingdom Foreign and Commonwealth Office travel advisory for 14 January 1991: "Morocco, Tunisia: Visitors - Travelers to Morocco and Tunisia should be aware of the risk of disturbances, particularly in cities. British Community - The British Community should keep a low profile and take sensible precautions against the possibility of civil disturbances."

27/ See travel advisories for Tunisia discussed in note 26.

28/ E2(1) report, para. 265.

29/ In the light of the importance of monthly data, the Panel found it necessary also to apply an adjustment where monthly data were not available.

30/ See E2(1) report, para. 287.

31/ See E2(1) report, para. 286.

Annex II

Report and recommendations made by the Panel of Commissioners concerning the second instalment of E3 claims*

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Introduction

1. The Governing Council of the United Nations Compensation Commission (the "Commission") appointed the present Panel of Commissioners (the "Panel"), composed of Messrs. Werner Melis (Chairman), David Mace and Sompong Sucharitkul, at its twenty-second session in October 1996 to review construction and engineering claims filed with the Commission on behalf of corporations and other legal entities in accordance with the relevant Security Council resolutions, the Provisional Rules for Claims Procedure (S/AC.26/1992/10)(the "Rules") and other Governing Council decisions. This report contains the recommendations to the Governing Council by the Panel, pursuant to article 38(e) of the Rules, concerning eight claims included in the second instalment. Each of the claimants seeks compensation for loss, damage or injury allegedly arising out of Iraq's 2 August 1990 invasion and subsequent occupation of Kuwait.

2. The claims submitted to the Panel in this instalment and addressed in this report were selected by the secretariat of the Commission from among the construction and engineering claims (the "E3 Claims") on the basis of criteria established under the Rules. These include the date of filing with the Commission and compliance by claimants with the requirements established for claims submitted by corporations and other legal entities ("category 'E' claims").

I. PROCEDURAL HISTORY

A. The nature and purpose of the proceedings

3. The status and functions of a Panel of Commissioners operating within the framework of the Commission are set forth in the report of the Secretary-General pursuant to paragraph 19 of Security Council resolution 687 (1991) dated 2 May 1991 (S/22559). Pursuant to that report, the Commission is a fact-finding body that examines claims, verifies their validity, evaluates losses, recommends compensation, and makes payment of awards.

4. Within the Commission, the Panel has been entrusted with three tasks in its proceedings. First, the Panel determines whether the various types of losses alleged by the claimants are within the jurisdiction of the Commission. Secondly, the Panel verifies whether the alleged losses are in principle compensable and had in fact been incurred by a given claimant. Thirdly, the Panel determines whether these compensable losses were incurred in the amounts claimed.

B. The procedural history of the claims in the second instalment

5. On 22 April 1998, the Panel issued a procedural order relating to the claims. In view of the complexity of the issues raised, the volume of the documentation underlying the claims and the compensation sought by the

claimants, the Panel decided to classify each of the claims as "unusually large or complex" within the meaning of article 38(d) of the Rules. The Panel thus decided to complete its review of the claims within 12 months of the date of its procedural order.

6. The Panel performed a thorough and detailed factual and legal review of the claims. The Panel considered the evidence submitted by claimants in response to requests for information and documents. It also considered Iraq's responses to the factual and legal issues raised in the twenty-first report of the Executive Secretary issued on 8 October 1997 in accordance with article 16 of the Rules.

7. After a review of the relevant information and documentation, the Panel made initial determinations as to the compensability of the loss elements of each claim. Pursuant to article 36 of the Rules, the Panel retained as its expert consultants a loss adjusting firm with international and Persian Gulf experience to assist the Panel in the quantification of losses incurred in large construction projects. The Panel then directed the expert consultants to prepare comprehensive reports on each of the claims, stating their opinions on the appropriate valuation of each of the compensable losses and setting forth the evidence supporting those opinions. The Panel reviewed those reports with the expert consultants.

8. In drafting this report, the Panel has not included specific citations to restricted or non-public documents that were produced or made available to it for the completion of its work.

C. The claims

9. This report contains the Panel's findings with respect to the following claims:

(a) Agrocomplect Co., a corporation organized under the laws of the Republic of Bulgaria, which seeks compensation in the amount of US$55,934,647 for losses allegedly caused by Iraq's invasion and occupation of Kuwait;

(b) The China Road and Bridge Corporation, a state enterprise licensed in the People's Republic of China, which seeks compensation in the amount of US$67,340,959 for losses allegedly caused by Iraq's invasion and occupation of Kuwait;

(c) Industrogradnja d.d., a company organized under the laws of the Republic of Croatia, which seeks compensation in the amount of US$17,573,758 for losses allegedly caused by Iraq's invasion and occupation of Kuwait;

(d) Energoprojekt Building and General Contracting Company Limited, a company registered under the laws of the Federal Republic of Yugoslavia, which seeks compensation in the amount of US$27,073,424 for losses allegedly caused by Iraq's invasion and occupation of Kuwait;

(e) Indian Railway Construction Company, a public sector enterprise organized under the laws of the Republic of India, which seeks compensation in the amount of US$106,430,570 for losses allegedly caused by Iraq's invasion and occupation of Kuwait;

(f) Hanyang Corporation, a company organized under the laws of the Republic of Korea, which seeks compensation in the amount of US$13,552,841 for losses allegedly caused by Iraq's invasion and occupation of Kuwait;

(g) Arcom S.A. Bucharest, a company organized under the laws of Romania, which seeks compensation in the amount of US$38,352,000 for losses allegedly caused by Iraq's invasion and occupation of Kuwait; and

(h) Freeport McMoran Resource Partners, a corporation organized under the laws of United States of America, which seeks compensation in the amount of US$10,301,346 for losses allegedly caused by Iraq's invasion and occupation of Kuwait.

II. LEGAL FRAMEWORK

A. Applicable law

10. As set forth in paragraphs 16-18 and 23 of the "Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of 'E3' Claims" (S/AC.26/1988/13)(the "First Report"), the Panel determined that paragraph 16 of Security Council resolution 687 (1991) reaffirmed the liability of Iraq and defined the jurisdiction of the Commission. The Panel applied Security Council resolution 687 (1991), other relevant Security Council resolutions, decisions of the Governing Council, and, where necessary, other relevant rules of international law.

B. The "arising prior to" clause

11. The Panel adopted the following interpretation of the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) with respect to contracts to which Iraq was a party:

(a) the phrase "without prejudice to the debts and obligations of Iraq arising prior to 2 August 1990, which will be addressed through normal mechanisms" was intended to have an exclusionary effect on the Commission's jurisdiction, i.e., that such debts and obligations could not be brought before the Commission;

(b) the period described by "arising prior to 2 August 1990" should be interpreted with due consideration to the purpose of the phrase, which was to exclude Iraq's existing bad debts from the Commission's jurisdiction;

/...

(c) the terms "debts" and "obligations" should be given the customary and usual meanings applied to them in ordinary discourse; and

(d) the use of a three month payment delay period to define the jurisdictional period is reasonable and consistent both with the economic reality in Iraq prior to the invasion and with ordinary commercial practices.

12. The Panel finds that a claim relating to a "debt or obligation arising prior to 2 August 1990" means a debt for payment that is based on work performed or services rendered prior to 2 May 1990.

C. Application of the "direct loss" requirement

13. The Governing Council's decision 7 (S/AC.26/1991/7/Rev.1), decision 9 (S/AC.26/1992/9) and decision 15 (S/AC.26/1992/15) provide specific instructions to the Panel regarding the interpretation of the "direct loss" requirement. Applying these decisions, the Panel examined the loss types presented in the claims to determine whether, with respect to each loss element, the requisite causal link - a "direct loss" - was present.

14. The Panel made the following findings regarding the meaning of "direct loss":

(a) with respect to physical assets in Iraq and in Kuwait on 2 August 1990, a claimant can prove a direct loss by demonstrating that the breakdown in civil order in those countries, which resulted from Iraq's invasion and occupation of Kuwait, caused the claimant to evacuate its employees and that the evacuation resulted in the abandonment of the claimant's physical assets;

(b) with respect to losses relating to contracts to which Iraq was a party, Iraq may not rely on force majeure or similar legal principles as a defense to its obligations under the contract;

(c) with respect to losses relating to contracts to which Iraq was not a party, a claimant may prove a direct loss if it can establish that Iraq's invasion and occupation of Kuwait or the breakdown in civil order in Iraq or Kuwait following the invasion caused the claimant to evacuate the personnel needed to perform the contract;

(d) costs incurred in taking reasonable steps to mitigate the losses incurred by the claimant are direct losses, bearing in mind that the claimant was under a duty to mitigate any losses that could reasonably be avoided after the evacuation of its personnel from Iraq or Kuwait; and

(e) the loss of use of funds on deposit in Iraqi banks is not a direct loss unless the claimant can demonstrate that Iraq was under a contractual or other specific duty to exchange those funds for convertible currencies and to authorize the transfer of the converted funds out of Iraq and that this exchange and transfer was prevented by Iraq's invasion and occupation of Kuwait.

D. Liability of Iraq

15. "Iraq" as used in decision 9 means the Government of Iraq, its political subdivisions, or any agency, ministry, instrumentality or entity (notably public sector enterprises) controlled by the Government of Iraq. At the time of Iraq's invasion and occupation of Kuwait, the Government of Iraq regulated all aspects of economic life other than some peripheral agriculture, services and trade. (See Iraq Country Profile 1990-91, Economist Intelligence Unit, London, 1990, p.10).

E. Date of loss

16. The Panel must determine "the date the loss occurred" within the meaning of Governing Council decision 16 (S/AC.26/1992/16) for the purpose of recommending compensation for interest and for the purpose of determining the appropriate exchange rate to be applied to losses stated in currencies other than in United States dollars.

17. With respect to the eight claims that are the subject of this report, the Panel finds that the losses occurred during the period of Iraq's occupation of Kuwait from 2 August 1990 to 2 March 1991. It is impractical for the Panel to determine with precision the date of each individual loss that underlies the claim at issue. Accordingly, the Panel uses 2 August 1990 as the date of loss, unless otherwise established, for the claims included in this report.

F. Interest

18. On the issue of the appropriate interest rate to be applied, the relevant Governing Council decision is also decision 16. According to that decision, "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award". In decision 16 the Governing Council further specified that "[i]nterest will be paid after the principal amount of awards", while postponing decision on the methods of calculation and payment of interest.

19. The Panel finds that interest shall run from the date of loss, or, unless otherwise established, on 2 August 1990.

G. Currency exchange rate

20. While many of the costs incurred by the claimants were denominated in currencies other than United States dollars, the Commission issues its awards in that currency. Therefore, the Panel is required to determine the

appropriate rate of exchange to apply to losses expressed in other currencies.

21. The Panel finds that the exchange rate set forth in the contract is the appropriate rate for losses under the relevant contracts because this was specifically bargained for and agreed to by the parties.

22. For non-contractual losses, the Panel finds the appropriate exchange rate to be the prevailing commercial rate, as evidenced by the United Nations Monthly Bulletin of Statistics on the date of loss, or, unless otherwise established, on 2 August 1990.

H. Evacuation losses

23. In accordance with paragraph 21(b) of decision 7 of the Governing Council, the Panel finds that the costs associated with evacuating and repatriating employees from Iraq between 2 August 1990 and 2 March 1991 are compensable to the extent that such costs are proven by the claimant. Compensable costs consist of temporary and extraordinary expenses relating to evacuation and repatriation, including transportation, food and accommodation.

I. Valuation

24. The Panel developed, with the assistance of the secretariat and the Panel's expert consultants, a verification program that addresses each loss item. The valuation analysis used by the Panel's expert consultants ensures clarity and consistency in the application of certain valuation principles to the construction and engineering claims.

25. After receipt of all claim information and evidence, the Panel's expert consultants applied the verification program. Each loss element was analysed individually according to a set of instructions. The expert consultants' analysis resulted in a recommendation of compensation in the amount claimed, an adjustment to the amount claimed, or a rejection of the amount claimed for each loss element. In those instances where the Panel's expert consultants were unable to respond decisively, the issue was brought to the attention of the Panel for further discussion and development.

26. For tangible property losses, the Panel adopted historical cost minus depreciation as its primary valuation method.

27. Additionally, the Panel's expert consultants verified all calculations in a claim, including all calculations within a statement of claim and the evidence submitted.

28. At Panel meetings, the Panel's expert consultants presented to the Panel claim-specific reports. These reports include, but are not limited to:

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(a) the claimant's name and identifying claim number;

(b) a table detailing the amount claimed and the amount for reclassified losses in United States dollars (or other currency shown on the claim form) by loss element and total;

(c) a brief description of the nature of the claimant's business and the project for which the claimant performed work, if any;

(d) the date that the claimant ceased work and the date that the claimant recommenced work, if known;

(e) an analysis of the evidence submitted and the basis of the valuation recommendation for each loss element; and

(f) a recommendation of compensation, if any, by category of loss and total for all categories, with explanatory comments.

J. Evidentiary requirements

29. Pursuant to article 35(3) of the Rules, corporate claims must be supported by evidence sufficient to demonstrate the circumstances and amount of the claimed loss. The Governing Council has made it clear in paragraph 5 of decision 15 that, with respect to business losses, there "will be a need for detailed factual descriptions of the circumstances of the claimed loss, damage or injury" in order to recommend compensation.

30. The category "E" claim form requires all corporations and other legal entities that have filed claims to submit with their claim form "a separate statement explaining its claim ('Statement of Claim'), supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and the amount of the claimed loss". In addition, claimants were instructed to include with the statement of claim the following:

> "(a) The date, type and basis of the Commission's jurisdiction for each element of loss ...;
>
> (b) The facts supporting the claim;
>
> (c) The legal basis for each element of the claim;
>
> (d) The amount of compensation sought, and an explanation of how this amount was arrived at."

31. In those cases where the original submission of the claim inadequately supported the alleged loss, the secretariat prepared and issued a written communication to the claimant pursuant to the Rules requesting specific information and documentation regarding the loss ("claim development letter"). In reviewing the subsequent submissions, the Panel noted that in

many cases the claimant still did not provide sufficient evidence to support its alleged losses.

32. The Panel is required to determine whether these claims are supported by sufficient evidence and, for those that are so supported, must recommend the appropriate amount of compensation for each compensable claim element. This requires the application of relevant principles of the Commission's rules on evidence and an assessment of the loss elements according to these principles. The recommendations of the Panel are set forth in the following chapters.

III. CLAIM OF AGROCOMPLECT CO.

33. Agrocomplect Co. ("Agrocomplect") is a Bulgarian corporation that performed work on engineering projects in Iraq commencing in 1978. The stated losses relate to work performed on the Hilla-Diwaniya 4 Land Reclamation Project ("Contract No. 65") in Iraq for the State Organization for Land Reclamation, operating under the authority of the Ministry of Irrigation of the Republic of Iraq. Agrocomplect seeks compensation in the amount of US$55,934,647 for contract losses, tangible property losses, the evacuation of Bulgarian workers from Iraq and loss of business reputation.

Table 1. Agrocomplect's claim

Claim element	Claim amount (US$)
A. Contract losses	17,062,296
B. Tangible property losses	38,201,079
C. Payment or relief to others	188,272
D. Loss of business reputation	483,000
Total	55,934,647

A. Contract losses

1. Facts and contentions

34. Agrocomplect seeks compensation in the amount of US$17,062,296 for unpaid work that Agrocomplect performed on the project and for miscellaneous and consequential expenses that are not, strictly speaking, contract-related expenses.

35. Agrocomplect commenced work on the project in 1985 under Contract No. 65. The project contract provided for work to be performed in eight separate zones. Agrocomplect stated that four of these zones were completed and handed over to the Iraqi employer and that the remaining four zones were not handed over due to Iraq's invasion and occupation of Kuwait.

36. Agrocomplect further stated that it was not paid for work completed on zone 9 of the project under an annex to the project contract, one third of which was completed by 2 August 1990. The remaining works on zone 9 continued (on a reduced basis) until 15 January 1991, when they were suspended because of "the deadline fixed by the United Nations".

37. On 13 January 1991, Agrocomplect formally notified the Iraqi administration that, as a result of the imposed economic blockade and the ensuing circumstances, Agrocomplect was not in a position to proceed with its work on the project.

2. Analysis and valuation

(a) Unpaid work and retention money

38. Agrocomplect seeks compensation for unpaid work in the amount of US$177,100 and, for unpaid retention money on the construction works completed at the end of 1990, in the amount of US$3,330,333. Agrocomplect stated that the records concerning the executed construction works were kept at its Baghdad office and were destroyed by fire.

39. The documents submitted by Agrocomplect include correspondence dated between August 1991 and February 1992 concerning Agrocomplect's request for compensation from the Iraqi employer. Agrocomplect did not provide a copy of Contract No. 65 relating to the Hilla-Diwaniya 4 Project or the annex relating to zone 9. Agrocomplect did not explain its calculation of the amounts due for retention money.

40. Agrocomplect also provided a letter dated 3 June 1992 from the Iraqi State Commission of Irrigation and Reclamation Projects to the Iraqi State Commission of Customs requesting a clearance certificate for Agrocomplect to settle the final account. The letter states that work commenced on the project on 12 March 1985 and that monthly advances were paid to Agrocomplect. It further states that the work carried out by Agrocomplect was satisfactorily completed.

41. The Panel finds that Agrocomplect did not demonstrate that its losses on Contract No. 65 were the direct result of Iraq's invasion and occupation of Kuwait. Agrocomplect continued to work on the project until the middle of January 1991. At that time, Agrocomplect stated that it was unable to continue on the project because of the economic blockade.

42. Further, the Panel finds that Agrocomplect did not submit sufficient evidence to support its allegations that no documents exist regarding its contract losses. Agrocomplect was the main contractor on Contract No. 65, a US$95 million project. Even acknowledging the differences in record-keeping procedures that exist in various countries, the Panel was not convinced that the only copy of Agrocomplect's records was kept in Iraq.

43. The Panel recommends no compensation for unpaid work or for retention money.

(b) Loss of rental income

44. Agrocomplect seeks compensation in the amount of US$3,685,982 for lost rental income over 155 working days between 14 January 1991 and 20 July 1991. The amount of compensation is calculated on the basis of estimated "lost opportunities" for heavy machines (30 per cent) and means of transport and communications (20 per cent). There is also an item called "quarry

right (Bedra quarry)". However, Agrocomplect provided no details with respect to this item.

45. Agrocomplect submitted copies of correspondence that was dated in October and November 1991 concerning its request for compensation from the Iraqi employer. Other than these requests for payment, Agrocomplect did not submit any other documentation or information.

46. As set forth above, the Panel finds that Agrocomplect did not demonstrate that the stated loss of rental income was a direct result of the invasion and occupation of Kuwait.

47. The Panel recommends no compensation for loss of rental income.

(c) Manufactured equipment and supplies

48. Agrocomplect seeks compensation in the amount of US$593,945 for manufactured equipment and supplies. Agrocomplect submitted a list of 12 items of equipment and materials, their respective invoice dates (between 20 April 1989 and 14 October 1990) and the amount of the invoices. Agrocomplect did not submit supporting documentation evidencing its ownership or its importation of the equipment and materials into Iraq.

49. The Panel finds that Agrocomplect did not submit sufficient evidence to demonstrate its loss of manufactured equipment and supplies. On the evidence submitted, the Panel is unable to determine when the orders were placed, whether supplies were paid for, whether the items were shipped to Agrocomplect, and finally, whether the items were imported into Iraq.

50. The Panel recommends no compensation for manufactured equipment and supplies.

(d) Idle equipment and machinery

51. Agrocomplect seeks compensation in the amount of US$3,779,945 for loss of use of equipment and machinery (heavy construction machines and transport vehicles) for more than 137 working days (commencing 2 August 1990). Agrocomplect calculated its loss by multiplying the number of unexecuted "machine shifts" (number of items of each type of machinery multiplied by 137 working days) by the unit price for each machine shift.

52. In support of its claim for loss of use of idle equipment and machinery, Agrocomplect submitted a letter dated 24 November 1991 to the Iraqi employer requesting compensation for equipment and machines contracted for, but not supplied.

53. Agrocomplect did not provide evidence to substantiate that, but for Iraq's invasion and occupation of Kuwait, the equipment and machinery would have been fully utilized. Furthermore, Agrocomplect did not provide evidence

of what the actual utilization rate was or how the unit price charged for the equipment was determined. Further, Agrocomplect did not make any deductions for expenses it would have incurred had the equipment and machinery been fully utilized.

54. The Panel recommends no compensation for loss of use of idle equipment and machinery.

(e) Branch office in Kuwait

55. Agrocomplect seeks compensation in the amount of US$32,586 for expenses incurred after 2 August 1990 by its branch office in Kuwait. The expenses include the cost of one vehicle, furniture, advance rental payments for six months, transport and social insurance, and uncompleted transaction expenses. Neither the original claim nor the subsequent replies from Agrocomplect to the claim development letter provided explanations or documents to support the stated losses. The Panel finds that Agrocomplect did not submit sufficient evidence to support the stated losses.

56. The Panel recommends no compensation for expenses incurred by the branch office in Kuwait.

(f) Interest and commissions

57. Agrocomplect seeks compensation in the amount of US$319,775 for interest on debt to its subcontractors and suppliers and for commissions.

58. Agrocomplect referred to a penalty clause in its contracts with subcontractors which requires a party in breach to pay 10 per cent of the contract amount as compensation to the other party in the event of default. Agrocomplect did not provide copies of the relevant contracts. Further, Agrocomplect provided no evidence or explanation regarding which subcontractors or suppliers made demands for payment, whether those subcontractors or suppliers were paid and whether Agrocomplect was then released from the respective contract. Finally, Agrocomplect did not provide any evidence of the bank guarantees or payment of such commissions.

59. The Panel recommends no compensation for interest or for bank guarantee commissions.

(g) Clearance certificates and bonds

60. Agrocomplect seeks compensation in the amount of US$4,158,073 for expenses related to customs and tax clearance certificates and performance bonds. Agrocomplect stated that it was unable to obtain customs and tax clearance certificates because Agrocomplect's machinery and equipment (including all documentation relevant to the project) were destroyed and Agrocomplect was rendered insolvent as a result of Iraq's invasion and occupation of Kuwait. Additionally, Agrocomplect contended that its

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inability to obtain a tax clearance certificate resulted in Agrocomplect being unable to secure the release of the performance bonds for the concluded projects.

61. Other than its statements that such losses occurred, Agrocomplect did not provide any evidence of losses related to customs and tax clearance certificates. Further, Agrocomplect did not submit a copy of its performance bond or correspondence concerning its unsuccessful attempts to secure its release of the bond.

62. The Panel recommends no compensation for customs and tax clearance certificates or for the performance bond.

(h) Unemployment insurance

63. Agrocomplect seeks compensation in the amount of US$318,184 for unemployment insurance costs for 317 people: 308 employees working on the Hilla-Diwaniya 4 Project and 9 employees working in Agrocomplect's Baghdad office. Agrocomplect did not provide a copy of the Bulgarian law which required the payment of unemployment insurance, the names of the employees to whom payments were made, or evidence that the payments were actually made.

64. The Panel finds that Agrocomplect did not submit any evidence of payment of unemployment insurance for repatriated workers.

65. The Panel recommends no compensation for unemployment insurance for repatriated workers.

(i) Branch office in Baghdad

66. For the period between 15 January and 15 July 1991, Agrocomplect seeks compensation in the amount of US$199,080 for its office rent in Baghdad, expenses incurred in maintaining the office in Baghdad, salaries of local employees for six months, salaries of five Bulgarian employees for six months in Bulgaria, expenses for protecting the project site and for collecting vehicles from the project camp.

67. The Panel finds that these losses are not the direct result of Iraq's invasion and occupation of Kuwait. Additionally, Agrocomplect did not submit any evidence to support its losses related to its office in Baghdad.

68. The Panel recommends no compensation for losses related to the branch office in Baghdad.

(j) Restart costs

69. Agrocomplect seeks compensation in the amount of US$467,293 for restart costs related to the erection of houses, production costs and recultivating terrain.

70. Based on its description of its restart costs, it appears that Agrocomplect is seeking compensation for losses that it has not yet incurred. Agrocomplect did not submit any documentation or information regarding these losses. The Panel finds that Agrocomplect may not recover for losses that are speculative and uncertain. Agrocomplect did not demonstrate that these potential losses are the direct result of Iraq's invasion of Kuwait.

71. The Panel recommends no compensation for restart costs.

3. Recommendation

72. The Panel recommends no compensation for contract losses.

B. Loss of tangible property

1. Facts and contentions

73. Agrocomplect seeks compensation in the amount of US$38,201,079 for loss of equipment and machinery, campsite equipment, spare parts and supplies. Agrocomplect stated that its tangible property was either completely destroyed or stolen after Iraqi troops looted the project site, including the project office and campsite.

2. Analysis and valuation

(a) Plant, equipment and machinery

74. Agrocomplect seeks compensation in the amount of US$25,909,988 for the "total destruction, plunder and disassembly" of heavy construction machinery, transport vehicles, other machinery and equipment.

75. Agrocomplect provided a list of 10 categories of plant, equipment and machinery, together with their imputed value. The categories are: heavy construction machines, cargo vehicles, passenger vehicles, mechanical workshop, construction equipment, construction laboratory, light construction machines, carpenter's shop, concrete plant and crushing, screening and washing plant. For each category of equipment and machinery, Agrocomplect provided a more detailed list with a brief description of the relevant assets, quantities and claimed amounts in Iraqi dinars. Agrocomplect did not give details of the age, cost or the basis used to determine the value of the assets.

76. Agrocomplect also provided customs forms that demonstrate that Agrocomplect imported some plant and equipment into Iraq. However, Agrocomplect failed to identify those items of imported plant and equipment which form the basis of its claim for loss of equipment and machinery.

77. Agrocomplect also provided moving vehicle permits for some of the equipment and machinery.

78. Agrocomplect further provided an inventory list of 602 items of machinery, equipment and vehicles that were imported into Iraq between 1979 and 1990. However, the explanations submitted with Agrocomplect's claim did not make specific reference to this inventory list. The Panel's expert consultants were unable to reconcile or cross-reference the items on this list with the customs declaration forms and moving vehicle permits that were also provided.

79. The Panel finds that the customs declaration forms submitted by Agrocomplect adequately demonstrate that Agrocomplect had imported some plant and equipment into Iraq. However, Agrocomplect failed to provide adequate explanations to enable the Panel to cross-reference the inventory list of assets forming the basis of Agrocomplect's claim and the customs receipts provided.

80. Agrocomplect provided a set of photographs depicting the project site and offices which had obviously been ransacked and looted. Agrocomplect did not state when the photographs were taken. The Panel finds that, although the photographs do depict some damaged equipment, Agrocomplect failed to provide evidence of its ownership of, and the value of, the equipment and machinery.

81. Notwithstanding Agrocomplect's failure to meet the requisite evidentiary standards, the Panel requested its expert consultants to perform a valuation of the losses of equipment and machinery set forth in Agrocomplect's claim. The Panel's expert consultants applied depreciation rates appropriate for such equipment and machinery and concluded that the equipment and machinery had no commercial value on the date of the loss. Accordingly, even if the Panel were to accept the documents provided by Agrocomplect as sufficient evidence of its ownership of, and the value of, the equipment and machinery, the Panel finds that the equipment and machinery had no commercial value on the date of the loss.

82. The Panel recommends no compensation for loss of equipment and machinery.

(b) Campsite equipment, spare parts and supplies

83. Agrocomplect seeks compensation for the total destruction and plunder of its campsite equipment (US$9,054,360) and spare parts and supplies

a canteen and kitchen, a consulting room and dental surgery, water mains and sewerage, the electrical network, purification plants and wire mesh fencing. The claim for spare parts and supplies includes tires, fuel, lubricant materials, construction materials, stores for household equipment, property and foodstuffs.

84. In support of its claim for campsite equipment, spare parts and supplies, Agrocomplect provided a list of the damaged assets together with their imputed value. Agrocomplect provided no further evidence in support of its losses, stating that all of the relevant evidence was kept at the project camp and was destroyed.

85. The Panel finds that Agrocomplect did not submit sufficient evidence of its ownership of, the value of and presence in Iraq of the campsite equipment, spare parts and supplies.

86. Notwithstanding Agrocomplect's failure to meet the requisite evidentiary standards, the Panel requested its expert consultants to perform a valuation of the losses of campsite equipment, spare parts and supplies set forth in Agrocomplect's claim. The Panel's expert consultants applied depreciation rates appropriate for such items and concluded that the campsite equipment, spare parts and supplies had no commercial value on the date of the loss. Accordingly, even if the Panel were to accept the documents provided by Agrocomplect as sufficient evidence of its ownership of, and the value of, the campsite equipment, spare parts and supplies, the Panel finds that the items claimed had no commercial value on the date of the loss.

87. The Panel recommends no compensation for campsite equipment, spare parts and supplies.

3. Recommendation

88. The Panel recommends no compensation for loss of tangible property.

C. Payment or relief to others

1. Facts and contentions

89. Agrocomplect seeks compensation in the amount of US$188,272 for the evacuation of 368 persons (312 employees and 56 family members) between 15 November 1990 and 14 January 1991.

90. Agrocomplect evacuated 94 persons by bus for a total cost of US$37,482. There were three buses which left Zakho, Iraq on 9 and 10 January 1991 for Bulgaria. The expenses claimed include fuel for the round trip, ten days accommodation for two drivers, three nights accommodation for 32 persons, depreciation expenses, customs duties and highway tolls.

91. Agrocomplect evacuated 274 persons by air for a total cost of US$150,790. The flights departed Baghdad for Sofia on 15 and 20 November 1990 and 14 January 1991. Agrocomplect stated that its claim for travel expenses includes the cost of exit visas.

92. Agrocomplect provided a list of the names of the 368 persons evacuated, together with their respective occupations, passport numbers and dates of issue, dates of entry into, and departure from, Iraq. The list was certified by the Embassy of Bulgaria, Baghdad, on 28 January 1993. Agrocomplect stated that it was unable to submit its payroll records for the employees as these records were destroyed by fire at the project camp in 1991.

93. Agrocomplect provided a copy of a letter dated 24 October 1991 from Balkan Bulgarian Airlines which stated that Agrocomplect paid the sum of US$150,790 for the evacuation of its employees by air. The same letter states that the flights from Baghdad to Sofia were operated by Iraqi Airways. The total amount stated represents an amount of US$550 per person.

2. Analysis and valuation

94. With respect to the claim for the cost of evacuation by bus, Agrocomplect did not provide any proof of payment. The Panel therefore finds that Agrocomplect did not provide sufficient evidence of this loss.

95. With respect to the claim for the cost of evacuation by air, the Panel finds that the letter from Balkan Bulgarian Airlines is sufficient evidence that Agrocomplect paid the amount of US$150,790 for the cost of the airfares. Although Agrocomplect was unable to provide its payroll records for the employees evacuated by plane, the Panel finds that the lists of names provided is sufficient under these circumstances.

3. Recommendation

96. The Panel recommends compensation in the amount of US$150,790 for payment or relief to others.

D. Loss of business reputation

97. Agrocomplect seeks compensation in the amount of US$483,000 for loss of business reputation. Agrocomplect described its loss as moral damage to the company and its employees, however, Agrocomplect did not explain the precise nature or method of calculation of such moral damage.

98. The Panel finds that moral damage or loss of business reputation is not a loss that is the direct result of Iraq's invasion and occupation of Kuwait.

99. The Panel recommends no compensation for loss of business reputation.

E. Recommendation for Agrocomplect

Table 2. Recommended compensation for Agrocomplect

	Claim element	Claim amount (US$)	Recommended compensation (US$)
A.	Contract loss	17,062,296	nil
B.	Tangible property	38,201,079	nil
C.	Payment or relief to others	188,272	150,790
D.	Loss of business reputation	483,000	nil
	Total	55,934,647	150,790

100. Based on its findings regarding Agrocomplect's claim, the Panel recommends compensation in the amount of US$150,790.

IV. CLAIM OF CHINA ROAD AND BRIDGE CORPORATION

101. The China Road and Bridge Corporation ("China Road and Bridge") is a state-owned enterprise registered in Beijing, China. China Road and Bridge seeks compensation in the amount of US$67,340,959 for contract losses, loss of tangible property, payment or relief to others, loss of profits, interest and claim preparation costs. The Panel does not address claims for interest or claim preparation costs (see paragraphs 148-149 infra), therefore these items have been excluded from table 3 below.

Table 3. China Road and Bridge's claim

	Claim element	Claim amount (US$)
IV. A.	Contract losses (Iraq)	64,819,446
B.	Contract losses (Kuwait)	
	1. Work performed	494,666
	2. Prepaid rent	46,852
	Sub-total	541,518
C.	Loss of profits	138,543
D.	Tangible property	
	Vehicles	77,100
	Management office	315,544
	Sports coaches' villa	345,610
	Financial statements	272,000
	Sub-total	1,010,254
E.	Payment or relief to others	
	Airfare	502,151
	Expenses	301,739
	Death subsidies	27,308
	Sub-total	831,198
	Total	67,340,959

A. Contract losses (Iraq)

102. China Road and Bridge seeks compensation in the original amount of US$64,819,446 for contract losses on five construction contracts with the Iraq Road and Bridge Authority (the "Employer") to build the Fifth Mosul Bridge, the Fourth Mosul Bridge, the Kumait Bridge, the Khazir Bridge and the Abassiya Bridge in Iraq. The Panel has carefully examined each of the construction contracts and finds that the projects were completed between 1984 and 1988 and the final tests on completion were all finished by August of 1989.

103. As the Panel explained in its First Report, the Panel recognizes that it is often difficult to establish a fixed date for the exclusion of its jurisdiction that does not contain an arbitrary element. Persuaded by practical considerations that a three month delay period adequately reflects the business practices prevailing in Iraq at the time, and does not depart from ordinary commercial practices, the Panel adopts for this claim the conclusion that the use of the term "debt or obligation arising prior to 2

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August 1990" means a debt or obligation that is based on work performed or services rendered prior to 2 May 1990. The Panel finds that the work performed on each of the five projects was completed prior to 2 May 1990.

104. China Road and Bridge entered into deferred payment agreements with the Employer for the payment of outstanding amounts. The deferred payment agreements are not new agreements, but only arrangements for the payment of existing obligations of Iraq. Accordingly, the contract losses are not within the jurisdiction of this Commission and are not compensable under Security Council resolution 687 (1991).

105. The Panel recommends no compensation for contract losses in Iraq.

B. Contract losses (Kuwait)

106. China Road and Bridge seeks compensation in the amount of US$541,518 for contract losses in Kuwait.

1. Work performed

(a) Facts and contentions

107. China Road and Bridge seeks compensation in the amount of US$494,666 for certified and uncertified invoices relating to the construction of 262 houses in Kuwait. China Road and Bridge was a subcontractor for Khalifa Fleij Construction and General Trading Establishment ("Khalifa") and the employer was the National Housing Authority of Kuwait (the "Employer").

108. China Road and Bridge began construction of the housing project in October 1987. The project was scheduled for completion in October 1990. On 30 April 1990, Khalifa sent China Road and Bridge a "confirmation bill" for work completed up to the end of March 1990. China Road and Bridge acknowledged that it received partial payment for this invoice but that US$173,487 was left unpaid.

109. China Road and Bridge stated that it returned to Kuwait after the end of Iraq's occupation of Kuwait and that it was not paid for work on the project because the Employer went bankrupt and ceased operations on 2 August 1990.

110. In support of this contention, China Road and Bridge submitted a certificate dated 16 September 1996 from the Al Faraj Auditing Office in Kuwait addressed to the Commission. The certificate states that the dissolution of Khalifa was decided by order of the Commercial Tribunal of Al Culya Court on 14 March 1995. The letter states that dissolution was "caused by the cruel and inhuman invasion of Kuwait".

111. For this reason, China Road and Bridge seeks compensation for payment for the unpaid balance of the certified contract payments in the amount of

US$173,487 for work performed prior to 30 March 1990. China Road and Bridge presented the "confirmation bill" issued by Khalifa, dated 30 April 1990, as evidence of its loss.

112. China Road and Bridge also seeks compensation for non-certified contract payments in the amount of US$63,477 for work performed between April and July 1990. In support of this loss, China Road and Bridge submitted a signed statement by a China Road and Bridge official that set forth the outstanding contract payments.

113. In addition, China Road and Bridge seeks retention money in the amount of US$255,780. Under the contract, retention money was to be deducted in an amount equal to 10 per cent of the money due to the subcontractor. The contract specified that 50 per cent would be due and owing after the issuance of a substantial completion certificate. The remaining 50 per cent would be released at the end of the maintenance period. The maintenance period was for a period of one year after the completion of the work to the satisfaction of Khalifa and the Employer. China Road and Bridge stated that although the project completion date was set for October 1990, it had fulfilled most of its obligations provided by the contract before 2 August 1990. China Road and Bridge added that the owner of the project for the construction of 262 houses "recovered the project by using other main contractor after the war". China Road and Bridge stated that Iraq's unlawful invasion of Kuwait caused Khalifa's bankruptcy, thereby eliminating China Road and Bridge's direct claim against Khalifa for its losses.

114. China Road and Bridge seeks compensation in the amount of US$1,922 for loss of profit on the unfinished work on the housing project.

(b) Analysis and valuation

115. The Panel has held that claimants must provide specific proof that the failure of a debtor to pay was the direct result of Iraq's invasion and occupation of Kuwait. A claimant must demonstrate that a debtor was rendered unable to pay due to insolvency or bankruptcy caused by the destruction of its business during Iraq's invasion and occupation of Kuwait.

116. The Panel notes that insolvency proceedings did, in many instances, take several years to complete following Iraq's occupation of Kuwait. This delay was attributed to the participation of many Kuwaiti corporations in the Kuwaiti Difficult Debt Settlement Program (the "Program"). Many Kuwaiti businesses took advantage of the Program in the years following the occupation. There is no indication, however, that Khalifa took part in the Program.

117. However, the Panel requires a copy of the court order or judgment indicating that the company was dissolved as a result of Iraq's invasion and occupation of Kuwait. Such a document would be evidence of the fact that

the money owed by the company is a loss directly related to Iraq's invasion and occupation of Kuwait. The Panel finds that an accountant's statement of insolvency is not sufficient proof that a Kuwaiti debtor has been adjudicated insolvent.

118. Even if the Panel accepted that Khalifa was dissolved as a result of Iraq's invasion and occupation of Kuwait, the confirmation bill submitted by China Road and Bridge indicates that all work was performed prior to 30 March 1990. The terms of payment of the contract state that Khalifa was required to make progress payments to the subcontractor within 14 days of the Employer's payment to the main contractor. The payment for work performed had been outstanding for four months prior to Iraq's invasion of Kuwait.

119. The Panel finds that China Road and Bridge did not submit sufficient evidence that failure to pay for the work performed was a direct result of Iraq's invasion and occupation of Kuwait.

(c) Recommendation

120. The Panel recommends no compensation for work performed.

2. Prepaid rent

121. China Road and Bridge seeks compensation in the amount of US$4,352 for prepaid rent on its management office located in Kuwait and in the amount of US$42,500 for prepaid rent for a villa in Kuwait. China Road and Bridge submitted the leases and receipts showing payment of rent for August and September 1990.

122. The Panel has found that prepaid rent is not an expense that is chargeable to the Employer, but part of the overheads that a contractor uses to calculate the rates charged.

123. The Panel recommends no compensation for prepaid rent.

3. Recommendation

124. The Panel recommends no compensation for contract losses in Kuwait.

C. Loss of profits

1. Facts and contentions

125. China Road and Bridge seeks compensation in the amount of US$138,543 for loss of profits on contracts held with 29 sports coaches, one translator and one cook. The Chinese sports coaches were hired by Kuwaiti sports associations to provide coaching for a variety of sports (table tennis, gymnastics, diving, volleyball and basketball). Additional agreements were

signed between China Road and Bridge and each sports coach. China Road and Bridge stated that under the relevant laws of China, a Chinese national is not entitled to work abroad unless it is with a company or an organization authorized by the Chinese Government to engage in a foreign economic cooperation business.

126. Pursuant to the terms of the contracts, the Kuwaiti sports authorities paid each sports coach a monthly salary. According to China Road and Bridge, the sports coach then turned over the monthly salary to China Road and Bridge. China Road and Bridge then paid each sports coach a monthly stipend.

127. China Road and Bridge stated that the sports coaches would have paid it a total of US$346,358 on the unfinished portions of the terminated contracts. China Road and Bridge stated that it would have made a 40 per cent profit on these contracts in the amount of US$138,543. To determine its loss of profit, China Road and Bridge used a rate of exchange of KD 1.000 to US$3.40.

128. China Road and Bridge provided copies of its agreements with 27 sports coaches, three translators and one cook. China Road and Bridge provided copies of the contracts between the sports coaches and Kuwaiti sports associations for 19 persons. For the remaining 12 persons, China Road and Bridge provided letters from the Kuwaiti sports associations stating that the persons had contracts with the specified sports association.

2. Analysis and valuation

129. The Panel finds that China Road and Bridge did not submit sufficient evidence to establish that it would have earned a profit of 40 per cent on the amounts paid under the sports coaches' contracts with the Kuwaiti sports associations. The Panel has held that a claimant must demonstrate ongoing and expected profitability by clear and convincing evidence. China Road and Bridge did not submit sufficient evidence of the living expenses paid with regard to the sports coaches in Kuwait. Without the ability to demonstrate the profit margin of the existing contract, the Panel finds that China Road and Bridge did not demonstrate by clear and convincing evidence the loss of profits that are the basis of its claim.

3. Recommendation

130. The Panel recommends no compensation for loss of profits.

D. Loss of tangible property

1. Facts and contentions

131. China Road and Bridge seeks compensation in the amount of US$1,010,254 for loss of tangible property, including vehicles, office equipment and

furniture located in the management office and villa, and for the cost of reconstituting its financial statements.

132. For the vehicles, China Road and Bridge submitted invoices, insurance certificates, vehicle licenses and witness statements that demonstrate its ownership and the presence of the vehicles in Kuwait at the time of Iraq's invasion of Kuwait. In calculating its loss, China Road and Bridge depreciated the vehicles at a rate of 10 per cent per annum for a stated loss of US$77,100.

133. With respect to the management office, China Road and Bridge submitted a list of the equipment and furniture, a statement describing the loss and a statement by the landlord confirming that the property was taken by the Iraqis. China Road and Bridge seeks US$315,544 for loss of the tangible property located at the management office.

134. China Road and Bridge stated that the villa was occupied by the sports coaches and that the tangible property located at the villa included items such as 34 colour televisions and video players, 20 gas stoves, 10 electric ovens, and 40 telephones. Although China Road and Bridge only submitted 29 contracts for the coaches, they stated that 35 sports coaches lived at the villa and that it paid US$8,500 per month in rent. China Road and Bridge did not submit an independent witness statement concerning the losses at the villa. China Road and Bridge seeks US$345,610 for the loss of tangible property located at the villa.

135. China Road and Bridge also seeks compensation in the amount of US$272,000 for the cost of reconstituting its financial statements. China Road and Bridge employed a certified public accounting firm to reconstitute its financial statements for the years 1983 to 1990. In 1993, the accounting firm estimated that reconstituting these "lost financial statements" would cost US$272,000. The work for reconstituting the financial statements began in 1996.

2. Analysis and valuation

136. The Panel finds that China Road and Bridge demonstrated that the vehicle, equipment and furniture losses were the direct result of Iraq's invasion and occupation of Kuwait.

137. With respect to the vehicles, the Panel finds that China Road and Bridge submitted sufficient evidence of its loss. Further, the Panel accepts China Road and Bridge's calculation of the value of the vehicles in the amount of US$77,100 at the time of the invasion.

138. With respect to the office equipment and furniture located in the management office, the Panel finds that China Road and Bridge submitted sufficient evidence of its loss. The Panel finds that the statement of the landlord is a critical piece of evidence in this regard. The Panel finds

that China Road and Bridge suffered a loss in the amount of US$315,544 for the tangible property located at the management office.

139. With respect to the office equipment and furniture located at the villa, China Road and Bridge did not submit sufficient evidence to demonstrate its loss. China Road and Bridge did not submit any evidence comparable to the landlord's statement regarding the losses associated with the management office. China Road and Bridge did not provide sufficient evidence of its ownership, or the value and presence of the tangible property located at the villa.

140. Under customary business practice, the financial statements of China Road and Bridge should have existed at its home office in China or, at the very least, with its auditors. The Panel finds that China Road and Bridge did not demonstrate that its stated loss was the direct result of the invasion and occupation of Kuwait.

3. Recommendation

141. The Panel recommends compensation in the amount of US$392,644 for loss of tangible property.

E. Payment or relief to others

1. Facts and contentions

142. China Road and Bridge seeks compensation in the amount of US$831,198 for payment and relief to others for the repatriation expenses for 6 executives from Iraq, 377 labourers from Kuwait, and 29 sports coaches from Kuwait.

143. China Road and Bridge stated that it evacuated 378 employees from Kuwait, but that Air China only billed it for 377 passengers. China Road and Bridge, therefore, seeks compensation for the airfares for 377 employees in the amount of US$461,448. China Road and Bridge seeks compensation in the amount of US$5,207 for its six managing executives. The sports coaches were evacuated from Kuwait via Air China at a cost of US$35,496. Accordingly, China Road and Bridge seeks a total of US$502,151 for compensation for airfare costs of evacuation.

144. In addition to the airfare, China Road and Bridge is seeking compensation in the amount of US$301,739 for the costs incurred during repatriation (i.e., food, medicine, out of pocket money) and consequential relief subsidies, salary and social welfare for each of the employees. China Road and Bridge is also seeking compensation in the amount of US$27,308 for the death of one employee who died during the evacuation from Iraq. This amount is for the funeral expenditures and relief subsidy provided to the deceased's family.

2. Analysis and valuation

145. The Panel finds that the repatriation and related costs for the employees of China Road and Bridge and for those whose welfare it was contractually responsible (see paragraphs 125 and 126, *supra*) are losses that are directly related to Iraq's invasion and occupation of Kuwait. China Road and Bridge provided lists of the names and payroll records of its employees and managing executives and a list of the names of the sports coaches, along with receipts issued by Air China.

146. From China Road & Bridge's claim of US$831,198 for payment or relief to others, the Panel has deducted an amount of US$5,878. This deduction represents the amount recommended by the category "C" Panel of Commissioners for departure expenses for four of the sports coaches who filed claims in category "C" in the total amount of US$5,878.

3. Recommendation

147. The Panel recommends compensation in the amount of US$825,320 for payment of relief to others.

F. Interest

148. For the reasons stated in paragraph 18, the Panel does not determine the compensability of claims for interest.

G. Claim preparation costs

149. China Road and Bridge reserved the right to claim for the costs incurred in preparing its claim. The Governing Council has directed the panels of Commissioners not to consider claim preparation costs at this time. Therefore, the Panel makes no recommendation for claim preparation costs.

H. Recommendation for China Road and Bridge

Table 4. Recommended compensation for China Road and Bridge

Claim element	Claim amount (US$)	Recommended compensation (US$)
IV. A. Contract losses (Iraq)	64,819,446	nil
B. Contract losses (Kuwait)		
1. Work performed	494,666	nil
2. Prepaid rent	46,852	nil
Sub-total	541,518	nil
C. Loss of profits	138,543	nil
D. Tangible property		
Vehicles	77,100	77,100
Management office	315,544	315,544
Sports coaches' villa	345,610	nil
Financial statements	272,000	nil
Sub-total	1,010,254	392,644
E. Payment or relief to others		
Airfare	502,151	496,273
Expenses	301,739	301,739
Death subsidies	27,308	27,308
Sub-total	831,198	825,320
Total	67,340,959	1,217,964

150. Based on its findings regarding China Road and Bridge's claim, the Panel recommends compensation in the amount of US$1,217,964.

V. CLAIM OF INDUSTROGRADNJA d.d.

151. Industrogradnja d.d. ("Industrogradnja"), a Croatian company, seeks compensation in the amount of US$17,573,758 for contract losses, interest on contractual debt, costs of bank guarantees, tangible property losses, and evacuation costs in relation to three military construction projects in Iraq (the "Projects"). The Projects were:

(a) P-195 (contract signed in 1979 for contract works in the amount of US$112,383,379);

(b) P-500 (contract signed in 1979 for contract works in the amount of US$38,568,894); and

(c) P-196 (contract signed in 1980 for contract works in the amount of US$25,196,242).

152. The contracts for each of the Projects were signed by the Directorate of Air Force and Air Defense Works on behalf of the Ministry of Defense of Iraq.

Table 5. Industrogradnja's claim

Claim element	Claim amount (US$)
A. Contract losses	10,339,380
B. Interest	5,333,007
C. Bank guarantee costs	89,807
D. Tangible and missing property	1,677,899
E. Payment or relief to others	133,665
Total	17,573,758

A. Contract losses

153. Industrogradnja seeks compensation in the amount of US$10,339,380 for contract losses relating to the Projects.

154. Industrogradnja stated that all significant construction work on the Projects was completed prior to 2 August 1990. The dates of the last certified payments for each Project were March 1987 (contract P-196), March 1988 (contract P-195) and December 1988 (contract P-500).

155. The outstanding debt under the contracts was rescheduled pursuant to an intergovernmental deferred payment agreement dated 16 May 1990 (which came into effect on 7 October 1990), with 60 per cent of the total amounts

due under the contracts to be deferred for two years and paid between December 1992 and June 1995.

156. The Panel finds that all work performed on the Projects was completed prior to 2 May 1990. The deferred payment agreements did not constitute a new agreement, but merely arrangements for the deferred payment of existing obligations of Iraq. Accordingly, the contract losses are not within the jurisdiction of this Commission and are not compensable under Security Council resolution 687 (1991).

157. The Panel recommends no compensation for contract losses.

B. Interest on contractual debt

158. Industrogradnja seeks compensation in the amount of US$5,333,007 for interest on its contractual debt for the period from 1 January 1986 to 31 December 1990. The interest amounts formed part of the payments that were deferred under the intergovernmental agreement of 16 May 1990.

159. This loss element is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991).

160. The Panel recommends no compensation for interest on contractual debt.

C. Bank guarantee costs

161. Industrogradnja seeks compensation in the amount of US$89,807 for bank guarantee costs. Industrogradnja stated that the losses on its bank guarantees occurred because of delays in obtaining the final acceptance certificates from the Iraqi employer. Industrogradnja stated the failure to obtain the final acceptance certificates was the direct result of Iraq's invasion and occupation of Kuwait.

162. The Panel finds that Industrogradnja submitted sufficient evidence to demonstrate that it incurred and paid the bank guarantee costs during the period from 9 August 1989 to 8 October 1991. However, the Panel finds no evidence to suggest that the failure of the Iraqi employer to issue the final acceptance certificate was causally related to the invasion and occupation of Kuwait.

163. The Panel recommends no compensation for bank guarantee costs.

D. Loss of tangible property

1. Missing, expropriated or destroyed assets

(a) Facts and contentions

164. Industrogradnja seeks compensation in the amount of US$1,129,660 for loss of tangible property that was missing, expropriated or destroyed as a result of Iraq's invasion and occupation of Kuwait.

165. According to Industrogradnja, the assets were lost because it had to evacuate its personnel from the Project sites and because of the circumstances in Iraq at the time of the invasion. Industrogradnja states that part of its property was expropriated by the Iraqi army without payment of compensation and part of it was damaged beyond usefulness.

166. In support of its stated losses of tangible property, Industrogradnja submitted a statement made by its engineer. The engineer travelled to Iraq between 18 March and 18 April 1992 to assess the state of the property at the Projects. The engineer submitted a list of assets that he found to be missing, destroyed or expropriated.

167. For each category of missing, expropriated and destroyed assets, Industrogradnja also submitted:

(a) a summary list of the assets in question providing the following information: a sequence number, the Project for which the asset was used, a code for the asset, a short description of the asset, the identity of the supplier, the supplier invoice number and date, the value as per the invoice, the estimated value at the time of the loss and a short description of the documents establishing the presence of the goods in Iraq;

(b) the underlying documentation for each of the assets in question; and

(c) the statement of its engineer confirming the loss of each of the assets in question.

(b) Analysis and valuation

168. The Panel finds that Industrogradnja submitted sufficient evidence of the ownership, value, and presence of its tangible assets in Iraq. The Panel noted that the three Projects were completed by December 1988. However, the Panel finds no evidence that the losses incurred for missing, expropriated or destroyed assets were the direct result of Iraq's invasion and occupation of Kuwait.

(c) Recommendation

169. The Panel recommends no compensation for missing, expropriated or destroyed assets.

2. Assets to be re-exported

170. Industrogradnja seeks compensation in the amount of US$548,239 for equipment that was in the process of being re-exported out of Iraq in March 1989 but which, according to Industrogradnja, was unable to be re-exported due to the invasion.

171. Industrogradnja calculated its loss as 40 per cent of the value of the equipment and made a further reduction for damage and demolition and customs fines. Industrogradnja submitted a letter dated 12 November 1992 that referred to possible penalties that it "might" suffer.

172. The Panel finds that the losses suffered by Industrogradnja during its attempts to re-export equipment in 1989 are not the direct result of Iraq's invasion and occupation of Kuwait. Further, Industrogradnja did not submit any evidence to support the damage to the equipment or that it paid the customs fines at issue.

173. The Panel recommends no compensation for assets to be re-exported.

3. Recommendation

174. The Panel recommends no compensation for loss of tangible property.

E. Payment or relief to others

1. Facts and contentions

175. Industrogradnja seeks compensation in the amount of US$133,665 for the evacuation of two of its employees in September 1990. Industrogradnja stated that Iraq's invasion of Kuwait created concerns for the safety of its personnel, requiring immediate evacuation.

176. In support of its claim, Industrogradnja submitted a summary list of the evacuation costs that it incurred as well as invoices in respect of those expenses. The majority of the invoices are, however, without an English translation.

2. Analysis and valuation

177. Evacuation costs are, in principle, compensable. The Panel has held that temporary and extraordinary costs of evacuation or repatriation are compensable. However, the Panel finds that many of the costs included by Industrogradnja are not compensable.

178. Industrogradnja included, for instance, the costs of electricity, water, telephone, and a gardener for its office in Baghdad for the period 2 August 1990 to 2 March 1991. The largest single item is in the amount of US$77,000 for custom invoices. However, Industrogradnja did not explain how the losses of these items were a direct result of Iraq's invasion and occupation of Kuwait.

179. With respect to the evacuation costs of its two employees, Industrogradnja submitted airline tickets for dates in March and April of 1992. However, the two employees departed from Iraq on 24 September 1990.

180. The Panel finds that Industrogradnja included all of its expenses and overheads related to the maintenance of its Baghdad office for the period 2 August 1990 through 2 March 1991. Although Industrogradnja provided proof of payment of the majority of items, it did not demonstrate that the amounts incurred were temporary or extraordinary in nature, nor that the damage was a direct result of Iraq's invasion and occupation of Kuwait.

3. Recommendation

181. The Panel recommends no compensation for payment or relief to others.

F. Recommendation for Industrogradnja

Table 6. Recommended compensation for Industrogradnja

Claim element		Claim amount (US$)	Recommended compensation (US$)
A.	Contract losses	10,339,380	nil
B.	Interest	5,333,007	nil
C.	Bank guarantee costs	89,807	nil
D.	Tangible and missing property	1,677,899	nil
E.	Payment or relief to others	133,665	nil
	Total	17,573,758	nil

182. Based on its findings regarding Industrogradnja's claim, the Panel recommends no compensation.

VI. CLAIM OF ENERGOPROJEKT BUILDING AND GENERAL CONTRACTING COMPANY LIMITED

183. Energoprojekt Building and General Contracting Company Limited, ("Energoprojekt"), a company registered in the Federal Republic of Yugoslavia, seeks compensation in the amount of US$27,073,424 for losses related to the Navigation Lock No. 1 project located on the Shatt-Al-Basrah canal in Iraq (the "Project"). This claim is one of six separate claims that were submitted by the Energoprojekt group of companies. One claim has been dealt with in the Panel's First Report. The remaining claims will be dealt with in subsequent reports.

184. Energoprojekt signed a contract in October 1986 with the Iraqi Ministry of Agriculture and Irrigation State Commission for Irrigation and Reclamation Projects (the "Employer") for the execution of civil engineering works on the Project. In addition to the civil engineering works, Energoprojekt was to provide spare parts and special tools for a ten year period of operation and train the Employer's staff in the use of the equipment. Energoprojekt started work on 15 January 1987 and stated that it was actively engaged on the Project on 2 August 1990.

185. Energoprojekt stated that Iraq's invasion of Kuwait caused immediate alarm among all personnel and created concern for the immediate safety and security of its personnel working on the Project. All communications with its home office were shut down immediately after 2 August 1990. Energoprojekt continued to work at the Project site until September 1990 when it obtained permission from the Government of Iraq to repatriate its foreign personnel to their home countries. Energoprojekt submitted several eyewitness accounts of the events at the Project site. By 31 October 1990, only 25 per cent of the workforce remained on site. All personnel were repatriated by the end of 1990.

Table 7. Energoprojekt's claim

	Claim element	Claim amount (US$)
A.	Contract losses	
	2a. Outstanding payments	10,519,819
	2b. Loan to employer	3,916,760
	2c. Retention money	954,940
	Subtotal	15,391,519
B.	Loss of profits	2,211,150
C.	Overheads	2,326,070
D.	Payments or relief to others	234,642
E.	Tangible property	6,910,043
	Total	27,073,424

/...

A. Contract losses

1. Facts and contentions

186. Energoprojekt seeks compensation in the amount of US$15,391,519 for contract losses, including outstanding payments for work performed in the amount of US$10,519,819, a loan to the Employer in the amount of US$3,916,760, and unpaid retention money in the amount of US$954,940. The loss for outstanding payments includes (i) invoices for certified work, (ii) uncertified work, (iii) materials on site, (iv) undocumented materials, (v) confiscated materials, (vi) materials located outside Iraq, and (vii) transport charges.

187. The contract provided that the Employer would pay Energoprojekt an advance fee, issue a bank guarantee in favor of Energoprojekt and make payments on the monthly interim certificates for work performed within 15 days of approval. Monthly interim certificates were deemed approved if no comments were received within 30 days from the date of submission to the Employer's representative.

188. Energoprojekt received from the Employer an advance payment for mobilization and other costs in the amount of US$4,422,301, of which US$3,439,567 was unamortized, and a credit for materials in the amount of US$534,280.

189. Under the terms of the Project contract, the Employer deducted 10 per cent of the value of the work performed as retention money until the total amount deducted reached 5 per cent of the award of costs including contingencies. The Employer was to release 50 per cent of the retention money at the commencement of the maintenance period and the remaining 50 per cent upon the issuance of the final acceptance certificate.

190. Each interim certificate also included an item for 75 per cent of the value of supplies delivered to the Project and to be used in the permanent works. The remaining 25 per cent of the value of the supplies was payable at the time the supplies were incorporated into the permanent works.

191. The last progress payment application prior to 2 August 1990 was for interim certificate number 5 for work performed during the period 19 December 1989 to 17 June 1990. As further evidence of the work completed and payments made, Energoprojekt submitted the monthly interim certificates for all work performed since the Project started.

2. Analysis and valuation

(a) Outstanding payments

192. Energoprojekt seeks compensation in the amount of US$10,519,819 for outstanding payments. The Panel finds that the advance payment in the

amount of US$3,439,567 and the credit for materials in the amount of US$534,280 must be deducted from the amounts sought by Energoprojekt for outstanding payments. However, the Panel finds that equity requires that the deduction of the advance payment be made proportionately for each individual loss item.

193. The Panel finds that only the work performed after 2 May 1990 is within the jurisdiction of the Commission. The Panel also finds that Energoprojekt submitted sufficient evidence to demonstrate that the work was actually performed and materials supplied as set forth in interim certificate number 5 and approved by the resident engineer.

(i) Certified work and materials

194. Energoprojekt seeks compensation in the amount of US$2,833,432 for certified work and materials included in interim certificate number 4 (for the period between 1 May and 19 December 1989) and interim certificate number 5 (for the period between 19 December 1989 and 17 June 1990). In calculating the amount of its loss, Energoprojekt subtracted (i) all payments made from the total value of work performed from the commencement of the Project to 17 June 1990, (ii) the retention money owed, but not yet due, and (iii) a loan made to the Employer and payable in 10 equal semi-annual instalments after the issue of the provisional acceptance certificate.

195. As stated in paragraphs 11 and 12, only work performed after 2 May 1990 is within the jurisdiction of the Commission. Therefore, the Panel finds that work identified in interim certificate number 4 in the amount of US$2,294,627, for work performed between 1 May and 19 December 1989, is clearly outside the jurisdiction of the Commission.

196. The net value of work performed pursuant to interim certificate number 5 is US$538,805. Interim certificate number 5 covers a 181 day period from 19 December 1989 to 17 June 1990. In order to compensate Energoprojekt for the value of the work performed after 2 May 1990, the Panel adopts the recommendation of its expert consultants and prorates the value of work performed under interim certificate number 5 evenly over the 181 day period. Accordingly, the Panel finds that the value of the work performed for the 46 days between 2 May and 17 June 1990 is US$187,819. From this amount, the Panel deducts the proportional advance payment, resulting in a total recommended compensation amount of US$158,141 for work performed between 2 May and 17 June 1990.

197. Based on the findings above, the Panel recommends compensation in the amount of US$158,141 for work performed and materials certified.

(ii) Uncertified work

198. Energoprojekt seeks compensation in the amount of US$1,444,000 for work performed after 17 June 1990. Energoprojekt stated that the majority of its records were left at the Project site and has submitted a witness statement that contains only the estimated value of the work performed.

199. The Panel finds that Energoprojekt did not submit sufficient evidence to support the loss of payments for work performed after 17 June 1990. The witness statement does not provide specific information regarding the status of the Project, a description of the work performed, the quantity or value of the supplies on site, if any, or a calculation of the executed works. Further, Energoprojekt did not explain why records were available for work performed before 17 June 1990 and not for work performed after 17 June 1990. There is no information that would allow the Panel to differentiate between the documentation submitted for interim certificate 5 and the documentation that should have been submitted for work performed after 17 June 1990.

200. The Panel recommends no compensation for work performed after 17 June 1990.

(iii) Materials on site

201. Energoprojekt seeks compensation in the amount of US$383,571 for materials left at the Project site, excluding materials claimed in interim certificate number 5.

202. As noted in paragraph 190 supra, 75 per cent of the value of materials included in the interim certificates was invoiced to the Employer in the interim certificates. Energoprojekt seeks compensation for the remaining 25 per cent in the amount of US$383,571. The Panel finds that Energoprojekt submitted sufficient evidence to demonstrate its loss of this material. The Panel finds that the proportional advance payment must be deducted from the amount claimed.

203. The Panel recommends compensation in the amount of US$322,960 for materials left on site included in interim certificates, but not paid by the Employer.

(iv) Undocumented materials

204. With respect to materials not included in interim certificates and materials for which no records exist, Energoprojekt seeks compensation in the amount of US$1,117,629. Energoprojekt submitted invoices in the total amount of US$854,500 that specified delivery terms, but did not demonstrate that Energoprojekt owned or paid for the material, or that the material was actually imported into Iraq and delivered to the site. For the remaining amount of US$263,129, Energoprojekt had no records at all.

205. The Panel finds that Energoprojekt did not submit sufficient evidence to demonstrate its loss of materials that were not included in interim certificates.

206. The Panel recommends no compensation for materials not included in interim certificates.

(v) Confiscated materials

207. Finally, Energoprojekt seeks compensation in the amount of US$4,626,608 for material confiscated in 1992 by an agency of the Government of Iraq. Energoprojekt submitted several letters, all dated in May and June of 1992, from an Iraqi agency that informed Energoprojekt of the confiscation of equipment, plant and materials of foreign companies for the purpose of completing construction projects. Energoprojekt provided the list of equipment, plant and materials submitted to it by Iraq and customs declarations related to some of the items identified on this list.

208. The Panel finds that the take over of the equipment, plant and materials by an Iraqi agency in 1992 is not directly related to the invasion and occupation of Kuwait.

209. The Panel recommends no compensation for material confiscated in 1992 by an agency of the Government of Iraq.

(vi) Materials located outside Iraq

210. Energoprojekt seeks compensation in the amount of US$108,285 for materials in transit or stored in the former Yugoslavia. Energoprojekt submitted invoices from its suppliers as evidence of its losses.

211. With respect to the materials in transit, Energoprojekt submitted invoices dated between 6 and 24 July 1990. Energoprojekt stated that the materials included in these invoices were stopped and turned back at the border between Bulgaria and Turkey. Energoprojekt did not explain why the shipment of the materials was refused passage, nor did it submit any information concerning the dates or cost of shipment. Finally, Energoprojekt did not submit any evidence of payment for these materials.

212. For the materials stored in Belgrade, the invoices were dated from 9 August to 11 September 1990. For the materials stored in Stara Pazova, Energoprojekt submitted internal invoices from its Belgrade office to its office in Start Pazova, dated between 1 August and 10 September 1990. Energoprojekt did not submit any evidence of payment, delivery, or its attempts to mitigate its damages. Further, Energoprojekt did not submit sufficient evidence to demonstrate that the supplies stored in Stara Pazova were ordered specifically for the Project.

213. The Panel finds that Energoprojekt did not submit sufficient evidence to demonstrate that the loss of materials in transit or stored in its offices was the direct result of Iraq's invasion and occupation of Kuwait.

214. The Panel recommends no compensation for materials located outside Iraq.

(vii) Transport charges

215. Energoprojekt seeks compensation in the amount of US$6,294 for transport charges for delivery of concrete forms to Energoprojekt. In support of the transport charges, Energoprojekt submitted invoices dated between 16 August and 24 August 1990 and one invoice dated 17 January 1991. None of the invoices indicate the date of shipment or delivery. Energoprojekt did not submit evidence of payment or its attempts to mitigate damages by cancelling the orders.

216. The Panel finds that Energoprojekt did not submit sufficient evidence to demonstrate that the transport charges were the direct result of Iraq's invasion and occupation of Kuwait.

217. The Panel recommends no compensation for transport charges.

218. Based on the findings above, the Panel recommends compensation in the amount of US$481,101 for outstanding payments.

(b) Loan to Employer

219. Energoprojekt seeks compensation in the amount of US$3,916,760 for the unpaid amount of a loan made to the Employer in the amount of 51 per cent of the total value of the contract. The Employer was to repay the loan in 10 equal semi-annual instalments beginning six months after the issue of the provisional acceptance certificate. Additionally, the Employer was to supply cement for the Project, the value of which was considered a partial payment of the amounts due and owing on the loan. Energoprojekt deducted the value of the cement delivered by the Employer from the amount due and owing on the loan.

220. The Panel finds that Energoprojekt submitted sufficient evidence to support the existence of the obligation of the Employer under the terms of the contract. The Panel further finds that the Employer made no cash payments on the loan.

221. The Panel finds that the loan is a deferred payment agreement that allowed Iraq to delay its payment for work performed. Therefore, only the portion of the loan amount that is attributable to work performed and materials paid for after 2 May 1990 is within the jurisdiction of the Commission. Of the total amount sought, the Panel finds that US$816,508 is attributable to work performed under interim certificate number 5. Of this

amount, the Panel prorates the amount due for a total amount of US$207,556. Finally, the Panel subtracts the apportionment of the unamortized advance payment to arrive at a net amount of US$174,759.

222. The Panel recommends compensation in the amount of US$174,759 for the unpaid amounts of Energoprojekt's loan to the Employer.

(c) Retention money

223. Energoprojekt seeks compensation in the amount of US$954,940 for retention money withheld pursuant to the terms of the contract. Energoprojekt submitted all interim certificates for the life of the Project. Payments under the contract were in conformity with with the terms of that contract. Under the terms of the contract, 50 per cent of the retention money was to be paid on the date of issue of the provisional acceptance certificate.

224. The Panel finds that Energoprojekt submitted sufficient evidence to establish the amounts retained and that no payment of withheld retention money was made to Energoprojekt. The Panel further finds that the Project was ongoing on 2 August 1990 and that all interim certificates were paid on a timely basis by the Employer. After deduction of the pro-rata portion of the unamortized advance payment, the Panel finds that total amount of retention money due is US$804,045. The Panel finds that 50 per cent of this amount, or US$402,023, would have been due and owing on the date of issue of the provisional acceptance certificate.

225. The Panel finds that retention money is a form of security held by an employer to ensure fulfilment by a contractor of its obligations to complete the project and to remedy defects after take over of the completed project by the employer. In view of the fact that Energoprojekt was prevented from terminating the Project without fault, and because the parties should share the risk of non-completion, the Panel finds that Energoprojekt is entitled to 50 per cent of the retention money due and owing on the date of issue of the provisional acceptance certificate.

226. The Panel recommends compensation in the amount of US$201,011 for retention money.

3. Recommendation

227. Based on the above, the Panel recommends compensation in the amount of US$856,871 for contract losses.

B. Loss of profits

1. Facts and contentions

228. Energoprojekt seeks compensation in the amount of US$2,211,150 for loss of profits, approximately five per cent of the net contract sum. Energoprojekt stated that, as no other information was available, it adopted the five per cent profit rate from the original tender dating from 1985.

2. Analysis and valuation

229. The Panel finds that Energoprojekt's statement that a profit would have been made is unsupported by the facts available concerning the Project. Originally, the Project was to have been completed in 1989. Because of a dispute with a major subcontractor, Energoprojekt was required to assume a greater role than originally foreseen under the contract. Correspondence and internal minutes provided by Energoprojekt indicate that Energoprojekt intended to negotiate a further agreement with the Employer to avoid any potential contract claims against Energoprojekt by the Employer.

230. Further, the Panel finds that Energoprojekt did not submit financial statements, budgets, management reports, or accounts that would enable the Panel to determine that Energoprojekt might have made a profit despite the 18 month delay. In evaluating a loss of profits claim, the Panel requires clear and convincing evidence of ongoing and expected profitability. In the absence of such evidence, the Panel will not recommend compensation for loss of profits.

3. Recommendation

231. The Panel recommends no compensation for loss of profits.

C. Overheads for head office

232. Energoprojekt seeks compensation in the amount of US$2,326,070 for overheads for its head office. Energoprojekt stated that it expected to recover its site and head office overhead costs by payments made under the interim certificates throughout the duration of the Project and that it was unable to recover these costs as a result of the forced abandonment of the Project.

233. The Panel finds that overheads for head offices are costs that are included in the net price of the contract, but are not separate items that are chargeable to the Employer. In commercial contracts such as this one, the overheads are part of the non-recoverable items that are included in the rates charged by the contractor. As stated by Energoprojekt, those costs were expected to be recovered from the payments made under the interim certificates.

234. The Panel recommends no compensation for overheads for the head office.

D. Payment or relief to others

1. Facts and contentions

235. Energoprojekt seeks compensation in the amount of US$234,642 for the repatriation of 314 employees (238 Chinese nationals, 25 Thai nationals, 51 Yugoslav nationals). Energoprojekt includes airfare from Amman to the home country of the employee, hotel costs for some personnel in Amman, as well as "war risk payments" made to certain Yugoslav personnel.

2. Analysis and valuation

236. Energoprojekt seeks compensation in the amount of US$184,450 for the cost of air tickets for 238 Chinese employees. It provided payroll records for 189 employees for September 1990. Energoprojekt included a letter from the Economic Counsellor's Office from the Embassy of the People's Republic of China requesting the withdrawal of the remaining 185 Chinese people at the Navigation Lock No.1 project. In that letter, the Counsellor acknowledged that, as of 16 September 1990, 53 persons had already left, demonstrating that 238 Chinese workers were at the site at some point in time.

237. In support of its claim, Energoprojekt included proof of payment to the Bank of China for airline tickets issued in March 1990. Energoprojekt did not provide any evidence of its airfare costs for the 238 Chinese workers present in Iraq at the time of Iraq's invasion and occupation of Kuwait. The Panel recommends no compensation for the evacuation costs of the 238 Chinese employees.

238. Energoprojekt seeks compensation in the amount of US$17,800 for the cost of air tickets for 25 Thai employees. Energoprojekt provided an invoice for 206 passengers routed from Amman to Bangkok, however it did not provide a list of Thai employees at the site or proof of payment of the invoice. The Panel recommends no compensation for the evacuation costs of the 25 Thai employees.

239. Energoprojekt seeks compensation in the amount of US$10,992 for the cost of air tickets for 51 Yugoslav employees and 11 family members. It provided a list of 39 employees who filed individual claims with the Commission and stated that no documentation is available for the remaining 12 workers employed at the site. Energoprojekt did not provide proof of payment to Yugoslav Airlines for the airfare costs of these employees. As part of its investigation, the Panel requested that the secretariat review the claims of the national airlines and the Federal Republic of Yugoslavia to verify whether Energoprojekt paid the airfare for its workers. Those claim files did not indicate that Energoprojekt paid the airfares for its

Yugoslav personnel. The Panel recommends no compensation for the evacuation of the Yugoslav nationals.

240. Energoprojekt seeks compensation in the amount of US$18,500 for war risk insurance premiums for 37 Yugoslav employees. It provides the bank transfer record as proof of payment. Additionally, Energoprojekt seeks compensation in the amount of US$2,900 for hotel costs in Amman. Energoprojekt provided the hotel invoices and proof of payment. The Panel finds that these items are temporary and extraordinary expenses related to repatriation, and are therefore compensable in the amount of US$21,400.

3. Recommendation

241. The Panel recommends compensation in the amount of US$21,400.

E. Loss of tangible property

1. Facts and contentions

242. Energoprojekt seeks compensation in the amount of US$6,910,043 for tangible property losses consisting of heavy plant and equipment, spare parts, temporary works, including camp buildings and associated fittings, fixtures and furniture, and other property confiscated by an agency of the Government of Iraq. Energoprojekt stated that the speed with which it evacuated its personnel prevented it from removing temporary works and installations or material for permanent works.

(a) Plant and equipment

243. For each item of plant and equipment, Energoprojekt submitted an itemized table that cross-referenced the description and identification, customs declarations, date of entry into Iraq, value in Iraqi dinar, applicable depreciation rate and the depreciated value of each item. Additionally, Energoprojekt submitted a copy of a list of temporarily imported equipment and vehicles which was signed by the Employer's resident engineer. Energoprojekt did not depreciate the value of spare parts.

244. Energoprojekt stated the depreciated value of the plant and equipment as US$5,087,223 and the value of the spare parts as US$305,900. Other than as described below, Energoprojekt did not submit invoices or proof of payment for plant and equipment or spare parts.

245. As a separate submission, Energoprojekt included the purchase agreements between Energoprojekt and one of its subcontractors from whom Energoprojekt purchased the plant and equipment. The agreements and its amendments indicated that the total purchase price of the plant and equipment was US$3,097,361. Of this purchase price, Energoprojekt paid nine per cent in cash, (i.e., US$278,762), with the remainder to be paid in equal instalments, commencing after the issue of the provisional acceptance

certificate. Energoprojekt's balance sheet, dated 15 February 1990, indicated its obligation to pay its subcontractor the amount of US$278,762 for the plant and equipment. It is unclear whether the plant and equipment purchased from the subcontractor is included in, or is separate from, the plant and equipment originally included in the claim.

(b) Temporary works

246. Energoprojekt seeks compensation in the amount of US$1,368,510 for temporary works, including prefabricated housing, office buildings, domestic and office furniture, and office equipment. Similar to its evidence for plant and equipment, Energoprojekt identified and described each item, cross referenced the customs declarations and applied various depreciation rates to arrive at the stated value.

(c) Confiscated property

247. Energoprojekt seeks compensation in the amount of US$148,410 for property confiscated by an agency of the Government of Iraq. Energoprojekt submitted several letters, all dated in May or June of 1992, from an Iraqi agency that informed Energoprojekt of the confiscation of the equipment, plant and materials of foreign companies for the purpose of completing construction projects. Energoprojekt provided a list of equipment, plant and materials submitted to it by Iraq and customs declarations related to some of the items identified on this list.

2. Analysis and valuation

(a) Plant and equipment

248. The Panel finds that Energoprojekt did not submit sufficient evidence to demonstrate its ownership of or payment for the plant and equipment losses included in its claim. Energoprojekt submitted a substantial number of documents that indicated that the plant and equipment were in Iraq at the time of Iraq's invasion of Kuwait. Further, Energoprojekt submitted sufficient evidence of its agreement to purchase plant and equipment from its subcontractor. However, Energoprojekt did not submit evidence demonstrating that Energoprojekt actually paid for the plant and equipment.

249. The Panel recommends no compensation for plant and equipment, including spare parts.

(b) Temporary works

250. The Panel finds that Energoprojekt did not submit sufficient evidence of its loss of temporary works. Energoprojekt submitted a table that set forth 24 items of loss and the depreciated value of each item. However, Energoprojekt did not submit purchase invoices or other proof of ownership.

Although the customs declarations establish that 13 items were imported into Iraq, there is no evidence of payment for, or ownership of, the items.

251. The Panel recommends no compensation for temporary works.

(c) Confiscated property

252. The Panel finds that the confiscation of the equipment, plant and materials by an agency of the Government of Iraq in 1992 is not directly related to the invasion and occupation of Kuwait.

253. The Panel recommends no compensation for confiscated property.

3. Recommendation

254. The Panel recommends no compensation for tangible property losses.

F. Interest

255. For the reasons stated in paragraph 18, the Panel does not determine the compensability of claims for interest.

G. Recommendation for Energoprojekt

Table 8. Recommended compensation for Energoprojekt

	Claim element	Claim amount (US$)	Recommended compensation (US$)
A.	Contract losses		
	2a. Outstanding payments	10,519,819	481,101
	2b. Loan to employer	3,916,760	174,759
	2c. Retention money	954,940	201,011
	Subtotal	15,391,519	856,871
B.	Loss of profits	2,211,150	nil
C.	Overheads	2,326,070	nil
D.	Payment or relief to others	234,642	21,400
E.	Tangible property	6,910,043	nil
	Total	27,073,424	878,271

256. Based on its finds regarding Energoprojekt's claim, the Panel recommends compensation in the amount of US$878,271.

VII. CLAIM OF INDIAN RAILWAY CONSTRUCTION COMPANY

257. Indian Railway Construction Company ("Indian Railway") is an Indian public sector enterprise that was engaged in 1981 by the Government of Iraq to perform construction works on three infrastructure projects in Iraq: the Mussayeb Samawa Railway Project ("Project A"), the Al Muthanna Cement Project ("Project B") and a Fertilizer Plant Project at Baiji ("Project C"). Indian Railway seeks compensation in the amount of US$106,430,570 for contract losses, interest on contractual debt, loss of profits, tangible property losses, financial losses, head office expenses, guarantee expenses and lost Iraqi bank deposits that it incurred as a result of Iraq's invasion and occupation of Iraq.

258. According to Indian Railway, Projects A and B were completed prior to Iraq's invasion of Kuwait on 2 August 1990. Project C was 65 per cent complete as at the time of the invasion, and Indian Railway stated that it was unable to complete this project after the outbreak of hostilities.

Table 9. Indian Railway's claim

	Claim element	Claim amount (US$)
A.	Contract losses	76,185,626
B.	Interest	19,220,179
C.	Loss of profits	1,367,890
D.	Tangible property	1,900,000
E.	Financial losses	2,248,952
F.	Head office expenses	747,266
G.	Continuing guarantee expenses	240,160
H.	Iraqi bank deposits	4,520,497
	Total	106,430,570

A. Contract losses

1. Facts and contentions

259. Indian Railway seeks compensation in the amount of US$76,185,626 for unpaid contractual debts for work performed on the three projects.

260. Indian Railway stated that Project A was completed on 31 December 1984, with handover occurring in May 1986. Because of the financial difficulties encountered by Iraq as a result of the war with Iran, a deferred payment arrangement system (effective 1 January 1984) was executed by the Governments of India and Iraq.

261. Indian Railway stated that Project B was completed on 5 July 1987, with handover occurring in 1989.

262. **Indian Railway stated that 65 per cent of the work on Project C was completed on 2 August 1990.**

263. Indian Railway stated that the foreign currency component of the contract for Project C was on deferred payment terms and that, from 1989 onwards, Iraq started to fall behind in its payment obligations. After the delays began, an agreement was entered into between the Governments of India and Iraq in 1990. Indian Railway stated that, notwithstanding this agreement, no payments were released by the Iraqi authorities because of the outbreak of hostilities as a result of Iraq's invasion of Kuwait.

2. Analysis and valuation

264. According to the dates of the work performed by Indian Railway, the majority of the contractual debt falls outside the jurisdiction of the Commission. The evidence originally submitted raised the possibility that some of the work in relation to Project C was performed between 2 May and 2 August 1990, in which case the claim for those amounts might have been within the jurisdiction of the Commission. Indian Railway was specifically asked to provide additional documentation that would indicate the dates on which work was performed under the Project C contract. In its reply, Indian Railway failed to give details of any work completed between these dates.

265. The Panel finds that the entire contract loss under Contracts A and B relate to work performed prior to 2 May 1990. The Panel further finds that the inter-governmental deferred payment agreement, effective 1 January 1984, did not have the effect of novating the debt for the purpose of Security Council resolution 687 (1991).

266. With respect to Project C, the Panel finds that although Indian Railway was specifically asked to provide evidence of the value of work completed between 2 May and 2 August 1990, it failed to do so. In the absence of requested evidence, the Panel finds that Indian Railway did not submit sufficient evidence to support its loss.

3. Recommendation

267. The Panel recommends no compensation for contract losses.

B. Interest on contractual debt

268. Indian Railway seeks compensation in the amount of US$19,220,179 for losses related to certified interest payable under the deferred payment arrangements applicable to Projects A and C.

269. The Panel finds that loss of interest with respect to Project A and part of Project C relate to contract losses that are excluded from the jurisdiction of the Commission. With respect to the loss of interest for work on Project C between 2 May and 2 August 1990, the Panel finds that

Indian Railway did not submit sufficient evidence in support of its stated loss.

270. The Panel recommends no compensation for interest on contractual debt.

C. Loss of profits

1. Facts and contentions

271. Indian Railway seeks compensation in the amount of US$1,367,890 for loss of profits on Project C. Indian Railway stated that it was unable to complete the work on Project C due to Iraq's invasion and occupation of Kuwait. According to Indian Railway, 65 per cent of the work was completed on 2 August 1990 and thereafter Iraq completed the work itself. Indian Railway stated that it filed a claim with Iraq for US$2.3 million for the loss of profits on Project C. In October 1992, Iraq, after considering Indian Railway's demand, recommended that a sum of US$1,367,890 be awarded on deferred payment terms. Indian Railway stated that it is not hopeful of receiving that sum.

2. Analysis and valuation

272. In support of its claim for loss of profits, Indian Railway provided a copy of minutes of meetings held from 10 to 14 October 1992 between delegates of Indian Railway and the Iraqi State Establishment for Implementation of Transportation and Communication Projects ("SEITAC"). From these minutes, it appears that Indian Railway and SEITAC agreed that the amount of US$1,726,958 (denominated in both United States dollars and Iraqi dinars) should be paid to Indian Railway. The dollar component was to be paid on deferred payment terms. However, this amount appears to include amounts extending beyond the loss of profits claim. The minutes make reference to losses related to the completion of Project C, a delay penalty and maintenance payments by SEITAC. The Panel finds that these minutes do not constitute evidence in support of loss of profits.

273. In its First Report the Panel found that a claimant seeking compensation for loss of profits must prove, first, that it had an existing contractual relationship at the time of the invasion. Secondly, the claimant must prove that the continuation of the relationship was rendered impossible by Iraq's invasion and occupation of Kuwait. Finally, the claimant must demonstrate that the contract would have been profitable as a whole. It is not sufficient to prove a profit at any stage before the completion of the project. (See paras. 145-147, First Report). Thus, Indian Railway must demonstrate that it would have been profitable to complete Project C.

274. Paragraph 5 of Governing Council decision 15 expressly states that the claimant seeking compensation for business losses such as loss of profits must provide "detailed factual descriptions of the circumstances of the

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claimed loss, damage or injury" in order for compensation to be awarded. Accordingly, the Panel requires clear and convincing evidence of ongoing and expected profitability.

275. The Panel finds that Indian Railway failed to comply with the evidentiary standards referred to above.

3. Recommendation

276. The Panel recommends no compensation for loss of profits.

D. Loss of tangible property

277. Indian Railway seeks compensation in the amount of US$1,900,000 for loss of tangible property. Indian Railway stated that it was required to make available certain equipment and machinery for the execution of the projects and that it left behind this equipment and machinery on 2 August 1990. It further stated that Iraq and Indian Railway subsequently agreed on an amount of US$1,900,000 that would be paid on deferred payment terms in respect of this equipment and machinery. Indian Railway stated that under the present conditions the release of such funds is not likely to take place.

278. The loss of equipment and machinery is supported by a summary list of the assets in question drawn up by Indian Railway. There is no contemporaneous evidence of the purchase price or value of the assets in question or of the presence of those assets in Iraq. Indian Railway did not provide a copy of its agreement with Iraq whereby Iraq agreed to pay Indian Railway US$1,900,000 on deferred payment terms in respect of the equipment and machinery.

279. The Panel finds that Indian Railway did not provide sufficient evidence to support its loss of tangible property. Indian Railway did not provide evidence of ownership, date of acquisition, or original cost to verify the losses. Further, Indian Railway did not provide a list of the property with an acknowledgment by Iraq of its confiscation and the value of the property.

280. The Panel recommends no compensation for loss of tangible property.

E. Financial losses

281. Indian Railway seeks compensation in the amount of US$2,248,952 for expenses that it incurred in raising funds with foreign and Indian financial institutions in order to meet its liquidity requirements for the timely completion of the projects. Indian Railway stated that it became necessary for it to raise these additional funds due to the fact that Iraq delayed the release of the amounts due under the respective contracts.

282. The Panel finds that Indian Railway failed to demonstrate the direct link between the interest expenses incurred and Iraq's invasion and occupation of Kuwait. Further, Indian Railway did not demonstrate that any of the amounts due under the respective project contracts related to work that was performed between 2 May and 2 August 1990.

283. The Panel recommends no compensation for financial losses.

F. Head office expenses

284. Indian Railway seeks compensation in the amount for US$747,266 for expenses associated with maintaining a site office in Iraq for 30 months. Indian Railway calculated its loss as a percentage share of head office expenses based on the total expenses for the years 1990-1991 and 1991-1992. Indian Railway provided no evidence in support of this loss, although it was specifically asked to do so. Furthermore, Indian Railway did not specify for which 30-month period it seeks compensation.

285. The Panel finds that Indian Railway did not submit sufficient evidence to demonstrate that its stated loss was a direct result of Iraq's invasion and occupation of Kuwait or that it actually incurred such expenses.

286. The Panel recommends no compensation for head office expenses.

G. Continuing guarantee expenses

287. Indian Railway seeks compensation in the amount of US$240,160 for expenses associated with maintaining political risk insurance and government guarantees for the projects. Indian Railway stated that, because it was not paid under the project contracts, it had to extend the term of the guarantees and, in doing so, incurred additional expenses.

288. The Panel finds that Indian Railway failed to demonstrate the direct link between the guarantee expenses incurred and Iraq's invasion and occupation of Kuwait. Further, the Panel finds that Indian Railway did not provide adequate evidence of its losses.

289. The Panel recommends no compensation for continuing guarantee expenses.

H. Iraqi bank deposits

290. Indian Railway seeks compensation in the amount of US$4,520,497 for Iraqi dinar amounts held in two accounts with the Rafidain Bank, Baghdad on 31 March 1992. The precise nature and circumstances of the loss and the reason why this amount cannot be recovered are unclear and are not specified in the claim. Indian Railway did not provide any evidence of the existence and terms of the bank accounts.

291. The Panel finds that Indian Railway did not demonstrate that the accounts are no longer in existence or that Indian Railway was denied access to the funds.

292. The Panel recommends no compensation for loss of funds in Iraqi bank accounts.

I. Recommendation for Indian Railway

Table 10. Recommended compensation for Indian Railway

	Claim element	Claim amount (US$)	Recommended compensation (US$)
A.	Contract losses	76,185,626	nil
B.	Interest	19,220,179	nil
C.	Loss of profits	1,367,890	nil
D.	Tangible property	1,900,000	nil
E.	Financial losses	2,248,952	nil
F.	Head office expenses	747,266	nil
G.	Continuing guarantee expenses	240,160	nil
H.	Iraqi bank deposits	4,520,497	nil
	Total	106,430,570	nil

293. Based on its findings regarding Indian Railway's claim, the Panel recommends no compensation.

VIII. CLAIM OF HANYANG CORPORATION

294. Hanyang Corporation ("Hanyang"), a Korean construction company, seeks compensation in the amount of US$13,552,841 for contract losses, tangible property losses, and bank deposits. Hanyang was engaged by various agencies of the Government of Iraq to work as a general contractor on the Oil Pumping Station K-2, the Haifa Street Development Project, the Abu-Beshoot Irrigation and Drain Project, and the North Jazira Irrigation Project Nos. 1A and 1B.

Table 11. Hanyang's claim

Claim element		Claim amount (US$)
A.	Contract losses	5,076,900
B.	Tangible property	1,906,230
C.	Iraqi bank credits	6,569,711
	Total	13,552,841

A. Contract losses

1. Facts and contentions

295. Hanyang seeks compensation in the amount of US$5,076,900 for retention money on the five construction projects.

296. The completion certificates submitted by Hanyang indicate that (i) the Oil Pumping Station was commissioned on 10 November 1985; (ii) the Haifa Street Development Project was commissioned on 2 March 1988; and (iii) the Abu-Beshoot Irrigation and Drain Project was commissioned on 18 March 1988. Although the completion certificates were issued for the North Jazira Irrigation Project No. 1A and the North Jazira Irrigation Project No. 1B on 30 June 1989 and 22 September 1989, respectively, the final commissioning was still pending on the date of the claim (20 September 1994).

297. With regard to the work performed by Hanyang on the projects, the documents provided by Hanyang indicate that the construction period for the projects commenced as early as October 1981, in the case of the Haifa Street Development Project, and terminated at the latest in September 1989 in the case of the North Jazira Irrigation Project No. 1B.

2. Analysis and valuation

298. The Panel finds that the work performed on the five projects was performed prior to 2 May 1990. In each case, as of 2 May 1990, the completion certificate had been issued, and the final commissioning had already taken place on three of the projects. Only the North Jazira Irrigation Projects were in the maintenance period in the three months prior

to the invasion. However, Hanyang did not submit employer certificates that would indicate the breakdown of the retention money due on the projects. The Panel finds that there is insufficient evidence to support the contract losses for the retention money owed on any of the projects.

3. Recommendation

299. The Panel recommends no compensation for contract losses.

B. Loss of tangible property

1. Facts and contentions

300. Hanyang seeks compensation in the amount of US$1,906,230 for loss of tangible assets, including heavy equipment and accessories, tools and small equipment, and spare parts and consumables. Hanyang stated that all of the tangible property was used on the project sites and was confiscated by the Iraqi authorities. According to Hanyang, a number of assets present on the project sites were in the process of being re-exported at the time of the invasion.

2. Analysis and valuation

(a) Heavy equipment and accessories

301. Hanyang submitted an inventory of assets with an stated value of US$1,906,230, but did not provide any evidence of ownership, importation of the equipment into Iraq or of the circumstances of the loss. Further, Hanyang did not identify on which project the heavy equipment was used. The Panel finds that Hanyang did not submit sufficient evidence of its stated loss.

(b) Tools and small equipment

302. In its statement of claim, Hanyang included a loss in the amount of US$200,000 for tools and small equipment. Because Hanyang did not submit any documentation regarding the tools and small equipment, the Panel finds that Hanyang does not have any evidence to support its loss.

(c) Spare parts and consumables

303. In its statement of claim, Hanyang included a loss in the amount of US$200,000 for spare parts and consumables. Because Hanyang did not submit any documentation regarding its loss, the Panel finds that Hanyang did not submit any evidence to support its loss of spare parts and consumables. Further the Panel finds it unlikely that such losses occurred as a direct result of Iraq's invasion and occupation of Kuwait, given that each of the projects was completed by 1989.

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3. Recommendation

304. The Panel recommends no compensation for loss of tangible property.

C. Iraqi bank credits

305. Hanyang seeks compensation in the amount of US$6,569,711 for amounts held with the Central Bank of Iraq on 8 November 1993.

306. Hanyang stated that amounts owed in United States dollars under the project contracts were to be paid by the Iraqi employer into Hanyang's account at the Central Bank of Iraq. Under a contract with the Iraqi State Oil Marketing Organization ("SOMO"), Hanyang arranged to lift Iraqi crude oil against payment from its account. The last date on which Hanyang lifted crude oil was 21 August 1989. In July 1990, it was negotiating with SOMO to lift a shipment of crude oil in the amount of US$6.5 million, however, this shipment failed due to Iraq's invasion of Kuwait.

307. The Panel finds that Hanyang demonstrated that the credit is still in existence at the Central Bank of Iraq as of 8 November 1993. For this reason, Hanyang has established that its loss of the use of the credit was not a direct result of Iraq's invasion and occupation of Kuwait.

308. The Panel recommends no compensation for Hanyang's credit at the Central Bank of Iraq.

D. Recommendation for Hanyang

Table 12. Recommended compensation for Hanyang

Claim element	Claim amount (US$)	Recommended compensation (US$)
A. Contract losses	5,076,900	nil
B. Tangible property	1,906,230	nil
C. Iraqi bank credits	6,569,711	nil
Total	13,552,841	nil

309. Based on the its findings regarding Hanyang's claim, the Panel recommends no compensation.

IX. CLAIM OF ARCOM S.A.

310. Arcom S.A. Bucharest ("Arcom"), a Romanian company, submitted only the category "E" claim form, a statement of claim and other untranslated documents in support of its stated losses. Arcom seeks compensation in the amount of US$38,352,000 for losses relating to a "factory for chemical equipment", an "ammonia tank" and a "cement plant".

311. On 25 March 1998, Arcom was sent a notification under article 15 of the Rules requesting it to comply with the formal requirements for filing a claim. Arcom was requested to reply on or before 25 September 1998. Arcom did not submit a reply. On 1 October 1998, Arcom was sent a formal notification of the deficiencies of its claim as filed. The deadline for Arcom to reply was 1 December 1998. Arcom did not reply.

312. The Panel finds that Arcom did not submit sufficient information or documentation to support its asserted losses.

313. The Panel recommends no compensation for Arcom.

X. CLAIM OF FREEPORT MCMORAN RESOURCE PARTNERS

314. Freeport McMoran Resource Partners ("Freeport") is a United States corporation whose primary activities are in the fields of agricultural, minerals, sulphur, copper, gold, silver, and oil and gas. Freeport conducts world-wide sulphur operations, primarily through an unincorporated division named Freeport Sulphur Company. Freeport seeks compensation in the amount of US$10,301,346 for contract losses and interest.

Table 13. Freeport's claim

Claim element	Claim amount (US$)
A. Contract losses	8,921,393
B. Interest	1,379,953
Total	10,301,346

A. Contract losses

1. Facts and contentions

315. On 21 November 1988, Freeport and the Mishraq Sulphur State Enterprise (the "Employer") concluded a Sulphur Purification Plant Contract (the "Contract") pursuant to which Freeport was required to design, construct, deliver, commission and test a sulphur purification plant. The Contract required the Employer to make an initial payment, 23 monthly instalments and a final payment on satisfaction of the performance guarantee. Each payment was linked to a performance schedule.

316. On 2 August 1990, the work on the plant was approximately two months ahead of schedule. Freeport had completed the work required to entitle it to monthly payments 21, 22 and 23, due, respectively, on 21 August, 21 September and 21 October of 1990. Freeport stated that the Employer had made all payments on a timely basis prior to 2 August 1990 and that no disputes existed between the parties as of that date.

317. On 26 August 1990, the Employer sent a telex to Freeport stating that Freeport's refusal to send its commissioning team to the plant constituted a breach of the Contract. In a telex dated 28 August 1990, Freeport purported to invoke the *force majeure* clause contained in the general terms and conditions of the Contract.

318. On 15 January 1991, Freeport terminated the Contract pursuant to its terms and conditions on the grounds that several payments were more than 60 days overdue.

319. Freeport seeks compensation in the amount of US$8,921,393 for the unpaid payments 21 through 25.

2. Analysis and valuation

320. The Panel finds that the evidence provided by Freeport confirms the payment situation it described. Freeport was ahead of the performance schedule by approximately two months and demonstrated that it received payment in full for each of the prior payment periods. The Panel further finds that the performance of the work creating the contract loss took place after 2 May 1990 in each case.

321. As part of its calculation of its loss, Freeport deducted from the amount due under the Contract the costs it saved as a result of the interruption of performance. According to Freeport, these costs amounted to US$413,000. In support of this figure, Freeport submitted an affidavit from its controller, stating that the controller investigated the costs that would have been incurred and was satisfied that the amount of US$413,000 accurately represented the amount that was not expended due to the termination of the Contract.

322. In the same affidavit, the controller stated that Freeport had already paid in full all its subcontractors and vendors on the project.

323. The Panel finds that Freeport demonstrated its contract losses for payments 21 through 25 in the amount of US$9,334,393. The Panel further finds that costs of US$413,000 must be deducted from this amount to reflect the amounts saved by Freeport due to the termination of the project.

3. Recommendation

324. The Panel recommends compensation in the amount of US$8,921,393 for contract losses.

B. Interest on contract losses

325. Freeport seeks compensation in the amount of US$1,379,953 for interest compounded monthly on the amounts due under the Contract. The interest is calculated at rates ranging from 3.87 to 8.4 per cent. These rates are based on Freeport's cost of borrowing for its own capital needs.

326. For the reasons stated in paragraph 18, the Panel does not determine the compensability of claims for interest.

C. Recommendation for Freeport

Table 14. Recommended compensation for Freeport

Claim element	Claim amount (US$)	Recommended compensation (US$)
A. Contract losses	8,921,393	8,921,393
B. Interest	1,379,953	nil
Total	10,301,346	8,921,393

327. Based on its findings regarding Freeport's claim, the Panel recommends compensation in the amount of US$8,921,393.

XI. SUMMARY OF RECOMMENDATIONS BY CLAIMANT

328. Based on the foregoing, the Panel recommends the following amounts of compensation for direct losses suffered by the claimants as a result of Iraq's invasion and occupation of Kuwait:

(a) Agrocomplect Co. (Bulgaria): US$150,790;

(b) The China Road and Bridge Corporation (China): US$1,217,964;

(c) Industrogradnja d.d. (Croatia): nil;

(d) Energoprojekt Building & General Contracting Company Limited (the Federal Republic of Yugoslavia): US$878,271;

(e) Indian Railway Construction Company (India): nil;

(f) Hanyang Corporation (Republic of Korea): nil;

(g) Arcom SA Bucharest (Romania): nil; and

(h) Freeport McMoran Resource Partners (United States): US$8,921,393.

Geneva, 15 December 1998

(Signed) Mr. Werner Melis
Chairman

(Signed) Mr. David Mace
Commissioner

(Signed) Mr. Sompong Sucharitkul
Commissioner

Annex III

Report and recommendations made by the Panel of Commissioners concerning the third instalment of E3 claims*

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Introduction

1. The Governing Council of the United Nations Compensation Commission (the "Commission") appointed the present Panel of Commissioners (the "Panel"), composed of Messrs. Werner Melis (Chairman), David Mace and Sompong Sucharitkul, at its twenty-second session in October 1996 to review construction and engineering claims filed with the Commission on behalf of corporations and other legal entities in accordance with the relevant Security Council resolutions, the Provisional Rules for Claims Procedure (S/AC.26/1992/10)(the "Rules") and other Governing Council decisions. This report contains the recommendations to the Governing Council by the Panel, pursuant to article 38(e) of the Rules, concerning seven claims included in the third instalment. Each of the claimants seeks compensation for loss, damage or injury allegedly arising out of Iraq's 2 August 1990 invasion and subsequent occupation of Kuwait.

2. An eighth claim, that of the partnership known as Kuwait Zars Link, filed with the Commission by the Government of the Russian Federation, was also before the Panel but was withdrawn during the proceedings by Zarubezstroy, the legal successor to the All-Union Production Association "Zarubezstroy", who was the Russian joint venture partner in Kuwait Zars Link. (See paragraph 161, *infra*).

3. The claims submitted to the Panel in this instalment and addressed in this report were selected by the secretariat of the Commission from among the construction and engineering claims (the "E3 Claims") on the basis of criteria established under the Rules. These include the date of filing with the Commission and compliance by claimants with the requirements established for claims submitted by corporations and other legal entities "category 'E' claims").

I. PROCEDURAL HISTORY

A. The nature and purpose of the proceedings

4. The status and functions of a Panel of Commissioners operating within the framework of the Commission are set forth in the report of the Secretary-General pursuant to paragraph 19 of Security Council resolution 689 (1991) dated 2 May 1991 (S/22559). Pursuant to that report, the Commission is a fact-finding body that examines claims, verifies their validity, evaluates losses, recommends compensation, and makes payment of awards.

5. Within the Commission, the Panel has been entrusted with three tasks in its proceedings. First, the Panel determines whether the various types of losses alleged by the claimants are within the jurisdiction of the Commission. Second, the Panel verifies whether the alleged losses are in principle compensable and had in fact been incurred by a given claimant.

Third, the Panel determines whether these compensable losses were incurred in the amounts claimed.

B. The procedural history of the claims in the third instalment

6. On 3 August 1998, the Panel issued a procedural order relating to the claims. None of the claims presented complex issues, voluminous documentation or extraordinary losses that would require the Panel to classify any of the claims as unusually large or complex within the meaning of article 38(d) of the Rules. The Panel thus decided to complete its review of the claims within 180 days of 3 August 1998, pursuant to article 38(c) of the Rules.

7. The Panel performed a thorough and detailed factual and legal review of the claims. The Panel considered the evidence submitted by claimants in response to requests for information and documents. It also considered Iraq's responses to the factual and legal issues raised in the twenty-first report of the Executive Secretary which was issued on 8 October 1997 in accordance with article 16 of the Rules.

8. After a review of the relevant information and documentation, the Panel made initial determinations as to the compensability of the loss elements of each claim. Pursuant to article 36 of the Rules, the Panel retained as its expert consultants a loss adjusting firm with international and Persian Gulf experience to assist the Panel in the quantification of losses incurred in large construction projects. The Panel then directed the Panel's expert consultants to prepare comprehensive reports on each of the claims, stating their opinions on the appropriate valuation of each of the compensable losses and setting forth the evidence supporting those opinions. The Panel reviewed those reports with the Panel's expert consultants.

9. In drafting this report, the Panel has not included specific citations to restricted or non-public documents that were produced or made available to it for the completion of its work.

C. The claims

10. This report contains the Panel's findings with respect to the following claims:

(a) GIK Hidrogradnja Civil Engineering & General Contracting Company, a corporation organized under the laws of the Republic of Bosnia and Herzegovina, which seeks compensation in the total amount of US$2,618,464 for losses allegedly caused by Iraq's invasion and occupation of Kuwait;

(b) Cansult Group Limited, a corporation organized under the laws of Canada, which seeks compensation in the total amount of Kuwaiti dinar (KD)

246,080, or US$851,489 at the applicable rate of exchange, for losses allegedly caused by Iraq's invasion and occupation of Kuwait;

(c) T.W. Engineering Limited, a corporation organized under the laws of Cyprus, which seeks compensation in the total amount of KD1,040,466,50, or US$3,600,230 at the applicable rate of exchange, for losses allegedly caused by Iraq's invasion and occupation of Kuwait;

(d) Struers Tech A/S, a corporation organized under the laws of Denmark, which seeks compensation in the total amount of Danish krona (DK)230,968.40 and US$1,200, or US$39,765 at the applicable exchange rate, for losses allegedly caused by Iraq's invasion and occupation of Kuwait;

(e) Dorsch Consult Ingenieurgesellschaft mbH, a corporation organized under the laws of the Federal Republic of Germany, which seeks compensation in the total amount of deutsche mark 2,279,859.69, or US$1,459,577 at the applicable exchange rate, for losses allegedly caused by Iraq's invasion and occupation of Kuwait;

(f) Fujita Corporation, a corporation organized under the laws of Japan, which seeks compensation in the total amount of yen 5,071,237, Iraqi dinar (ID) 26,635.561, and US$56,496.38, or US$177,297 at the applicable exchange rate, for losses allegedly caused by Iraq's invasion and occupation of Kuwait; and

(g) Al Manbaa Drilling Company, a corporation organized under the laws of the United Arab Emirates, which seeks compensation in the total amount of UAE dirham 1,096,909, or US$298,804 at the applicable exchange rate, for losses allegedly caused by Iraq's invasion and occupation of Kuwait.

II. LEGAL FRAMEWORK

A. Applicable law

11. As set forth in paragraphs 16-18 and 23 of the "Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of 'E3' Claims" (the "First 'E3' Report") (S/AC.26/1998/13), the Panel determined that paragraph 16 of Security Council resolution 687 (1991) reaffirmed the liability of Iraq and defined the jurisdiction of the Commission. The Panel applied Security Council resolution 687 (1991), other relevant Security Council resolutions, decisions of the Governing Council, and, where necessary, other relevant rules of international law.

B. The "arising prior to" clause

12. The Panel adopted the following interpretation of the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) with respect to contracts to which Iraq was a party:

(a) the phrase "without prejudice to the debts and obligations of Iraq arising prior to 2 August 1990, which will be addressed through normal mechanisms" was intended to have an exclusionary effect on the Commission's jurisdiction, i.e., that such debts and obligations could not be brought before the Commission;

(b) the period described by "arising prior to 2 August 1990" should be interpreted with due consideration to the purpose of the phrase, which was to exclude Iraq's existing bad debts from the Commission's jurisdiction;

(c) the terms "debts" and "obligations" should be given the customary and usual meanings applied to them in ordinary discourse; and

(d) the use of a three month payment delay period to define the jurisdictional period is reasonable and consistent both with the economic reality in Iraq prior to the invasion and with ordinary commercial practices.

13. The Panel finds that a claim relating to a "debt or obligation arising prior to 2 August 1990" means a debt for payment that is based on work performed or services rendered prior to 2 May 1990.

C. Application of the "direct loss" requirement

14. The Governing Council's decision 7 (S/AC.26/1991/7/Rev.1), decision 9 (S/AC.26/1992/9) and decision 15 (S/AC.26/1992/15) provide specific instructions to the Panel regarding the interpretation of the "direct loss" requirement. Applying these decisions, the Panel examined the loss types presented in the claims to determine whether, with respect to each loss element, the requisite causal link - a "direct loss" - was present.

15. The Panel made the following findings regarding the meaning of "direct loss":

(a) with respect to physical assets in Iraq and in Kuwait on 2 August 1990, a claimant can prove a direct loss by demonstrating that the breakdown in civil order in Iraq or Kuwait, which resulted from Iraq's invasion and occupation of Kuwait, caused the claimant to evacuate its employees and that the evacuation resulted in the abandonment of the claimant's physical assets;

(b) with respect to losses relating to contracts to which Iraq was a party, Iraq may not rely on force majeure or similar legal principles as a defence to its obligations under the contract;

(c) with respect to losses relating to contracts to which Iraq was not a party, a claimant may prove a direct loss if it can establish that Iraq's invasion and occupation of Kuwait or the breakdown in civil order in

Iraq or Kuwait following the invasion caused the claimant to evacuate the personnel needed to perform the contract;

(d) costs incurred in taking reasonable steps to mitigate the losses incurred by the claimant are direct losses, bearing in mind that the claimant was under a duty to mitigate any losses that could reasonably be avoided after the evacuation of its personnel from Iraq; and

(e) the loss of use of funds on deposit in Iraqi banks is not a direct loss unless the claimant can demonstrate that Iraq was under a contractual or other specific duty to exchange those funds for convertible currencies and to authorize the transfer of the converted funds out of Iraq and that this exchange and transfer was prevented by Iraq's invasion and occupation of Kuwait.

D. Liability of Iraq

16. "Iraq" as used in decision 9 means the Government of Iraq, its political subdivisions, or any agency, ministry, instrumentality or entity (notably public sector enterprises) controlled by the Government of Iraq. At the time of Iraq's invasion and occupation of Kuwait, the Government of Iraq regulated all aspects of economic life other than some peripheral agriculture, services and trade. (See Iraq Country Profile 1990-91, Economist Intelligence Unit, London, 1990, p. 10.)

E. Date of loss

17. The Panel must determine "the date the loss occurred" within the meaning of Governing Council decision 16 (S/AC.26/1992/16) for the purpose of recommending compensation for interest and for the purpose of determining the appropriate exchange rate to be applied to losses stated in currencies other than in United States dollars.

18. With respect to the seven claims that are the subject of this report, the Panel finds that the losses occurred during the period of Iraq's occupation of Kuwait, from 2 August 1990 to 2 March 1991. It is impractical for the Panel to determine with precision the date of each individual loss that underlies the claim at issue. Accordingly, the Panel uses 2 August 1990 as the date of loss, unless otherwise established, for the claims included in this report.

F. Interest

19. On the issue of the appropriate interest rate to be applied, the relevant Governing Council decision is decision 16. According to that decision, "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award". In decision 16 the Governing Council further specified that "[i]nterest will

be paid after the principal amount of awards," while postponing decision on the methods of calculation and payment of interest.

20. The Panel finds that interest shall run from the date of loss, or, unless otherwise established, from 2 August 1990.

G. Currency exchange rate

21. While many of the costs incurred by the claimants were denominated in currencies other than United States dollars, the Commission issues its awards in that currency. Therefore the Panel is required to determine the appropriate rate of exchange to apply to losses expressed in other currencies.

22. The Panel finds that the exchange rate set forth in the contract is the appropriate rate for losses under the relevant contracts because this was specifically bargained for and agreed to by the parties.

23. For non-contractual losses, the Panel finds the appropriate exchange rate to be the prevailing commercial rate, as evidenced by the United Nations Monthly Bulletin of Statistics on the date of loss, or, unless otherwise established, on 2 August 1990.

H. Evacuation losses

24. In accordance with paragraph 21(b) of decision 7 of the Governing Council, the Panel finds that the costs associated with evacuating and repatriating employees from Iraq between 2 August 1990 and 2 March 1991 are compensable to the extent that such costs are proven by the claimant. Compensable costs consist of temporary and extraordinary expenses relating to evacuation and repatriation, including transportation, food and accommodation.

I. Valuation

25. The Panel developed, with the assistance of the secretariat and the Panel's expert consultants, a verification program that addresses each loss item. The valuation analysis used by the Panel's expert consultants ensures clarity and consistency in the application of certain valuation principles to the construction and engineering claims.

26. After receipt of all claim information and evidence, the Panel's expert consultants applied the verification program. Each loss element was analysed individually according to a set of instructions established by the Panel. The expert consultants' analysis resulted in a recommendation of compensation in the amount claimed, an adjustment to the amount claimed, or a rejection of the amount claimed for each loss element. In those instances where the Panel's expert consultants were unable to respond decisively, the issue was brought to the attention of the Panel for further discussion and development.

27. For tangible property losses, the Panel adopted historical cost minus depreciation as its primary valuation method.

28. Additionally, the Panel's expert consultants verified all calculations in a claim, including all calculations within a statement of claim and the evidence submitted.

29. At Panel meetings, the Panel's expert consultants presented to the Panel claim-specific reports. These reports include, but are not limited to:

(a) the claimant's name and identifying claim number;

(b) a table detailing the amount claimed and the amount for reclassified losses in United States dollars (or other currency shown on the claim form) by loss element and total;

(c) a brief description of the nature of the claimant's business and the project for which the claimant performed work, if any;

(d) the date that the claimant ceased work and the date that the claimant recommenced work, if known;

(e) an analysis of the evidence submitted and the basis of the valuation recommendation for each loss element; and

(f) a recommendation of compensation, if any, by category of loss and total for all categories, with explanatory comments.

J. Evidentiary requirements

30. Pursuant to article 35(3) of the Rules, corporate claims must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and amount of the claimed loss. The Governing Council has made it clear in paragraph 5 of decision 15 that, with respect to business losses, there "will be a need for detailed factual descriptions of the circumstances of the claimed loss, damage or injury" in order to recommend compensation.

31. The category "E" claim form requires all corporations and other legal entities that have filed claims to submit with their claim form "a separate statement explaining its claim ('Statement of Claim'), supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and the amount of the claimed loss". In addition, claimants were instructed to include with the statement of claim the following particulars:

> "(a) The date, type and basis of the Commission's jurisdiction for each element of loss ...;
>
> (b) The facts supporting the claim;

(c) The legal basis for each element of the claim;

(d) The amount of compensation sought, and an explanation of how this amount was arrived at."

32. In those cases where the original submission of the claim inadequately supported the alleged loss, the secretariat prepared and issued a written communication to the claimant pursuant to the rules requesting specific information and documentation regarding the loss ("claim development letter"). In reviewing the subsequent submissions, the Panel noted that in many cases the claimant still did not provide sufficient evidence to support its alleged losses.

33. The Panel is required to determine whether these claims are supported by sufficient evidence and, for those that are so supported, must recommend the appropriate amount of compensation for each compensable claim element. This requires the application of relevant principles of the Commission's rules on evidence and an assessment of the loss elements according to these principles. The recommendations of the Panel are set forth below.

/...

III. CLAIM OF GIK HIDROGRADNJA CIVIL ENGINEERING & GENERAL CONTRACTING COMPANY

34. GIK Hidrogradnja Civil Engineering and General Contracting Company ("Hidrogradnja"), a construction enterprise in the former Socialist Federal Republic of Yugoslavia and now in Bosnia and Herzegovina, seeks compensation in the amount of US$2,618,464 for contract losses and interest on contractual debt related to work performed in its capacity as a contractor on the Hemren Dam Project in Iraq.

Table 1. Hidrogradnja's claim

Claim element	Claim amount (US$)
Contract losses	2,037,862
Interest	580,602
Total	2,618,464

A. Contract losses

1. Facts and contentions

35. On 4 February 1976, Hidrogradnja entered into a contract with the Directorate General of Dams and Reservoirs of Iraq's Ministry of Agriculture and Irrigation pursuant to which Hidrogradnja was engaged to construct a rock-fill dam and a power house.

36. Hidrogradnja states that it performed work between 1971 and 1981. In 1983, and again in 1984, Hidrogradnja and Iraq agreed to a system of deferred payments that was accepted by the Mixed Yugoslav Committee for Economic Cooperation after Iraq experienced payment difficulties under the Hemren Dam Project Contract.

37. The contract losses are listed as two separate items on the category "E" claim form: the "Account C" amounts (US$325,225) and "Account 13" amounts (US$1,712,637). Each loss relates to a series of progress payments that became due and payable under the Hemren Dam Project Contract.

38. Pursuant to the 1983 and 1984 deferred payment agreements, payments of "Account C" amounts became due and payable on or before 4 August 1986. Hidrogradnja states it was deprived of the payment of US$325,225 due to Iraq's invasion of Kuwait.

39. Pursuant to the same deferred payment agreements, payments of the "Account 13" amounts were due and payable by 1988. Hidrogradnja states it was certain that it would have collected all amounts due to it on the Hemren Dam Project Contract had it not been for Iraq's invasion of Kuwait.

2. Analysis and valuation

40. In its statement of claim, Hidrogradnja indicates that the performance that created the debts in question occurred between 1971 and 1981.

41. The Panel has defined the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) to limit the jurisdiction of the Commission to exclude debts of the Government of Iraq if the performance relating to that obligation took place prior to 2 May 1990. The Panel finds that the contract losses stated by Hidrogradnja relate entirely to work that was performed prior to 2 May 1990.

42. The claim for contract losses is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991).

3. Recommendation

43. The Panel recommends no compensation for contract losses.

B. Interest on contractual debt

44. Hidrogradnja seeks compensation for interest in the amount of US$580,602 on the unpaid contractual debt. Hidrogradnja stated that the Mixed Yugoslav Committee determined that 5 per cent annual interest should be paid on all amounts subject to deferred payment, starting on 31 December of the year in which the debt was incurred and continuing until its settlement. The Panel finds that Hidrogradnja's documents demonstrate that it received all of the amounts due in 1986.

45. As the claim for interest on unpaid contractual debt is based entirely on non-compensable pre-existing debt, this loss is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991).

46. The Panel recommends no compensation for interest on contractual debt.

C. Recommendation for Hidrogradnja

Table 2. Recommended compensation for Hidrogradnja's claim

Claim element	Claim amount (US$)	Recommended compensation (US$)
Contract losses	2,037,862	nil
Interest	580,602	nil
Total	2,618,464	nil

47. Based on its findings regarding Hidrogradnja's claim, the Panel recommends no compensation for Hidrogradnja.

IV. CANSULT GROUP LIMITED

48. Cansult Group Limited ("Cansult"), a Canadian corporation, seeks compensation in the amount of US$ 851,489 for contract losses and loss of profits incurred by its Cypriot subsidiary, Cansult Limited. Cansult Limited entered into a joint venture agreement with a Kuwaiti company, Gulf Consult. The joint venture performed work in connection with the Ardiya Treatment Plant Project in Kuwait (the "Project"). Cansult stated that its claim covers only the losses incurred by Cansult Limited, which represent 50 per cent of the total losses of the joint venture. The claim does not include losses incurred by the joint venture or Cansult Limited's joint venture partner.

Table 3. Cansult's claim

Claim element	Claim amount (US$)
Contract	518,070
Loss of profits	333,419
Total	851,489

A. Contract losses

1. Facts and contentions

49. On 26 July 1990, Cansult's Cyprus subsidiary and Gulf Consult entered into an Agreement for the Supervision of Construction, Renovation and Extension Works of the Ardiya Treatment Plant and Operation and Maintenance (the "Agreement") with the Kuwaiti Ministry of Public Works. Cansult seeks compensation in the amount of US$518,070 for contract losses.

50. Commencing in April 1989, prior to the formal execution of the Agreement, Cansult performed preparatory work in relation to the Project. The contract losses include costs and disbursements incurred during this pre-contract period. The Agreement was executed on 26 July 1990. Cansult was unable to proceed on site due to Iraq's invasion of Kuwait. However, Cansult stated that it continued to incur expenses in relation to the Project during the occupation of Kuwait (including maintaining staff and a senior consultant on standby) in the expectation that Kuwait would be liberated quickly and that the Project would continue as planned.

51. The Kuwaiti Ministry of Public Works officially terminated the Agreement by a letter dated 3 August 1992 due to the invasion and its express intent not to proceed with these special works of developing and expanding the treatment plant at Ardiya.

52. Cansult seeks compensation for work performed and disbursements made from April 1989 to November 1992, as well as financial costs incurred for the performance bond, standby costs in relation to a consultant engaged to

/...

assist Cansult on the Project, and demobilization/notice period costs in relation to 11 employees engaged on the Project.

53. Cansult makes the following claims for contract losses.

Table 4. Cansult's contract losses

Loss item	Claim amount (US$)
Work performed	173,778
Disbursements	38,670
Costs of letters of guarantee	32,927
Standby costs	176,211
Demobilization costs	96,484
Total	518,070

2. Analysis and valuation

(a) Work performed

54. Cansult seeks compensation for work performed during the period from 5 April 1989 to 30 November 1992. In its claim submission, Cansult described this loss item as "time expenses".

55. Cansult calculated the amount of work performed by applying an applicable hourly charge-out rate to the time recorded by its principals and employees for work performed by them. The recorded time expenses were itemized in the summary of time and disbursements from 5 April 1989 to 30 November 1992. Cansult also provided copies of employee time sheets that support its claim. The number of hours worked, the charge-out rate of the relevant person and a description of the activity undertaken were given in each case. There was a period between July 1990 and January 1991 when no time was recorded. Several of the entries for January 1991 to March 1991 described the activity undertaken as "reactivate project". The entries subsequent to 3 August 1992, the date the Kuwaiti Ministry of Public Works formally sought to terminate the agreement, described the activities undertaken as, *inter alia*, "preparation of submission", "review submission" and "update submission".

56. Time expenses in the amount of US$74,033 were incurred between April 1989 and 26 July 1990, prior to the execution of the Agreement. Those expenses relate to the initial preparation and negotiation of Cansult's tender to the Kuwaiti Ministry of Public Works. Those expenses were incurred solely in furtherance of Cansult's efforts to obtain a contract with the Kuwaiti Ministry of Public Works. The Panel finds that those expenses were not compensable because such expenses were not losses that were the direct result of Iraq's invasion and occupation of Kuwait.

57. The Panel finds that the majority of time expenses in the amount of US$99,745 incurred between January 1991 and November 1992 were "restart expenses", expenses incurred to restart the project after its interruption, which were not ordinary business expenses. The Panel finds that those expenses were incurred as a direct result of Iraq's invasion and occupation of Kuwait. However, the Panel finds that the expenses in the amount of US$5,136 incurred after 3 August 1992, the date upon which the Kuwaiti Ministry of Public Works formally terminated the contract, are not the direct result of Iraq's invasion and occupation of Kuwait and, therefore, are not compensable. The Panel finds that time expenses in the amount of US$94,609 incurred between January 1991 and 3 August 1992 are compensable as "restart expenses".

58. The Panel recommends compensation in the amount of US$94,609 for time expenses.

(b) Disbursements

59. Over a three year period, Cansult incurred expenses in the amount of US$38,670 related to travel, communications, printing, shipping and advertising as part of the process of recruiting some staff for the project. The recorded disbursements are varied and include airfares (such as airfares from Cyprus to Kuwait, Riyadh to Kuwait, Riyadh to Toronto, Cairo to Kuwait, Toronto to Kuwait), hotel expenses in Kuwait, courier fees and telephone and facsimile expenses.

60. The individual disbursements itemized by Cansult in the summary of time and disbursements from 5 April 1989 to 30 November 1992 are supported by the relevant invoices and disbursement receipts, such as telephone records and travel receipts.

61. The disbursements in the amount of US$17,401 incurred prior to 26 July 1990 are not compensable because such disbursements are not losses that are the direct result of Iraq's invasion and occupation of Kuwait. As stated above, the Panel finds that the disbursements were related to Cansult's efforts to obtain its contract with the Kuwaiti Ministry of Public Works. With respect to disbursements for restart expenses in the amount of US$21,269 incurred between January 1991 and November 1992, the Panel finds that those disbursements are losses that are the direct result of Iraq's invasion and occupation of Kuwait. Because no disbursements were incurred after 3 August 1992, the date the Kuwaiti Ministry of Public Works formally terminated the contract, the Panel finds that disbursements in the amount of US$21,269 are compensable.

62. The Panel recommends compensation in the amount of US$21,269 for disbursements.

(c) Costs of letters of guarantee

63. The Agreement required Cansult to provide a performance guarantee for the advance payment and insure the design of the project in an amount equal to 10 per cent of Cansult's consulting fees set out in the Agreement. The performance guarantee was issued by the Federal Bank of the Middle East through the Alahli Bank to the Gulf Bank. Cansult seeks reimbursement in the amount of US$32,927 for the payment of commissions charged by these three financial institutions.

64. Cansult submitted copies of invoices addressed to its Cyprus subsidiary, relating to bank charges in connection with providing the performance guarantee.

65. In 1992, Cansult sought the agreement of the Kuwaiti Ministry of Public Works to return the performance guarantee to avoid further costs. Instead, the Kuwaiti Ministry of Public Works exercised their rights under the performance guarantee, enabling the Kuwaiti Ministry of Public Works to recover the advance payment it made to Cansult.

66. In its First Report, the Panel found that commissions paid on bank guarantees were compensable as long as the interruption of the related performance was the direct result of Iraq's invasion of Kuwait. The Panel finds that Cansult has submitted sufficient evidence to support the costs incurred for letters of guarantee.

67. The Panel recommends compensation in the amount of US$32,927 for the costs of letters of guarantee.

(d) Costs of standby consultant

68. Cansult seeks compensation in the amount of US$176,211 for the standby costs of its consultant for the Project from 1 September 1990 to 30 June 1992.

69. Pending the start of the Project, the consultant was temporarily located in Cansult's office in the United Arab Emirates. Cansult attempted to mitigate its costs by employing the consultant on a part-time basis, but was unable to keep him fully productive.

70. Cansult provided confirmation by Coopers & Lybrand, United Arab Emirates, of the amounts paid to the consultant. However, Cansult did not provide information concerning the terms of his employment and/or whether the stated costs were within the terms of such employment.

71. Cansult did not provide individual receipts, invoices and time records in relation to the amounts claimed.

72. The standby costs incurred by Cansult are not compensable because Cansult failed to provide sufficient evidence of the actual loss incurred.

The Panel finds it unreasonable on the part of Cansult to retain a consultant for almost two years in the expectation that a project that had yet to begin would be activated at some uncertain date in the future. Finally, Cansult did not make a sufficient showing of its contractual relationship with the consultant or its efforts to mitigate its loss by re-deploying the consultant to another project.

73. The Panel recommends no compensation for the standby consultant costs.

(e) Demobilization costs

74. Cansult seeks compensation in the amount of US$96,484 for demobilization costs. Cansult argues that the Agreement gave rise to a contractual obligation on the part of the Kuwaiti Ministry of Public Works to pay Cansult the costs of demobilizing its staff engaged on the Project because the Kuwaiti Ministry of Public Works sought to terminate the Agreement by its letter dated 3 August 1992.

75. Cansult's list of expenses for demobilization costs for staff engaged on the project identifies eleven staff members together with their respective monthly cost, which Cansult applied to the relevant notice period (one month in each case) in order to calculate the total cost of demobilization of the relevant staff.

76. The Panel finds that the claim for demobilization costs is not compensable because the decision of the Kuwaiti Ministry of Public Works to terminate the agreement was an economic decision and is therefore, not a direct loss caused by Iraq's invasion and occupation of Kuwait. Further, Cansult failed to provide any evidence in support of its claim for demobilization costs. Although Cansult provided the names of the eleven staff members, Cansult did not provide any evidence that those staff members were engaged on the Project, that they were required for Task 1 of the Agreement, or that they were in place to begin work at the time of the invasion.

77. The Panel recommends no compensation for demobilization costs.

3. Recommendation

Table 5. Recommended compensation for Cansult's contract losses

Loss item	Loss amount (US$)	Recommended compensation (US$)
Work performed	173,778	94,609
Disbursements	38,670	21,269
Costs of letters of guarantee	32,927	32,927
Standby costs	176,211	nil
Demobilization	96,484	nil
Total	518,070	148,805

78. The Panel recommends compensation in the amount of US$148,805 for contract losses.

B. Loss of profits

79. Cansult stated that the joint venture would have earned a profit equal to 11.5 per cent of gross fees for the consultancy work it was to provide under the Agreement. Cansult argues that it negotiated this profit component as part of its Agreement. Cansult seeks compensation in the amount of US$333,419 for loss of profits.

80. The Panel finds that Cansult's claim for loss of profits is not compensable because Cansult failed to provide clear and convincing evidence of ongoing and expected future profitability. Arguably, the Agreement sets forth a profit component, but Cansult did not demonstrate that it achieved and retained such profit components in similar or like projects with the Kuwaiti Ministry of Public Works or any other Ministry of the Government of Kuwait.

81. The Panel recommends no compensation for loss of profits.

C. Recommendation for Cansult

Table 6. Recommended compensation for Cansult's claim

Claim element	Claim amount (US$)	Recommended compensation (US$)
Contract loss	518,070	148,805
Loss of profit	333,419	nil
Total	851,489	148,805

82. Based on its findings regarding Cansult's claim, the Panel recommends compensation in the amount of US$148,805 for Cansult.

V. T.W. ENGINEERING LIMITED

83. T.W. Engineering Limited ("T.W. Engineering"), a Cypriot-registered company, seeks compensation in the amount of US$3,600,230 for contract losses, tangible property losses, payment or relief to others and business transaction losses. In addition, T.W. Engineering has filed a separate "contingent claim" for the entire amount claimed in the event that the Commission does not award compensation for the losses referred to above on the grounds of lack of evidence.

84. T.W. Engineering is a specialist in tunnelling and headings for large projects. At the time of Iraq's invasion of Kuwait, T.W. Engineering performed work on construction projects in Kuwait with a Kuwaiti joint venture partner, House of Trade and Contracting Company ("House of Trade").

85. With the exception of specific items that relate solely to T.W. Engineering, the claim is for 49 per cent of the losses incurred by the joint venture with House of Trade. This percentage represents the interest of T.W. Engineering in the joint venture.

Table 7. T.W. Engineering's claim

Claim element	Claim amount (US$)
Contract losses	380,131
Business transaction losses	127,163
Loss of Tangible Property	1,022,048
Payment or relief to others	6,500
Disruption of legal proceedings	2,064,388
Total	3,600,230

A. Contract losses

1. Facts and contentions

86. T.W. Engineering seeks compensation in the amount of US$380,131 for contract losses related to four construction projects, two of which were completed as of 2 August 1990 and two of which had commenced but were incomplete on that date. T.W. Engineering seeks its 49 per cent share of the amounts that were owed to the joint venture. T.W. Engineering asserts that all its records were lost or destroyed as a result of Iraq's invasion and occupation of Kuwait. It states that the relevant papers and documents were in the site offices or in the manager's flat in Kuwait City.

2. Analysis and valuation

87. With the exception of some handwritten notes, there is no evidence, such as copies of contracts, invoices showing amounts due or progress reports showing work performed, in support of the amounts claimed for the

stated contract losses. T.W. Engineering did submit a copy of its joint venture agreement with House of Trade, but did not submit any information or documentation about the projects.

88. In reply to the claim development letter, T.W. Engineering provided its audited accounts for the years 1987-1997. These accounts make no reference to T.W. Engineering's investment in, or revenue earned by, the joint venture with House of Trade. T.W. Engineering did not submit separate accounts of the joint venture. Further, there is no supporting evidence that T.W. Engineering incurred any costs or earned any revenue from its joint venture with House of Trade.

89. The Panel finds that T.W. Engineering's assertion that all evidence in support of its contract losses was lost does not exonerate it from the requirement to produce the relevant records when, according to customary business practices, some of these business records should have been kept in locations other than Kuwait. Accordingly, the Panel finds that T.W. Engineering did not submit sufficient evidence of its stated contract losses on projects with House of Trade.

3. Recommendation

90. The Panel recommends no compensation for contract losses.

B. Business transaction losses

1. Facts and contentions

91. T.W. Engineering seeks compensation in the amount of US$127,163 for business transaction losses related to three items:

(a) Loss of its share of investment in the joint venture with House of Trade (US$84,775);

(b) A loan by a director of T.W. Engineering to pay Kuwaiti lawyers in connection with the liquidation of T.W. Engineering's previous joint venture partner, Contracting and Petroleum Works Company, Kuwait ("Contracting and Petroleum Works") (US$28,824); and

(c) A loan by a director of T.W. Engineering to enable T.W. Engineering to continue its operations and enter into the joint venture with House of Trade after the failure of the joint venture with Contracting and Petroleum Works (US$13,564).

92. T.W. Engineering provided a copy of the joint venture agreement between T.W. Engineering and House of Trade dated 7 October 1987. Under the joint venture agreement, T.W. Engineering was obliged to provide equipment for the joint venture and House of Trade was to provide the capital. In relation to the loss of its share of investment in the joint venture with House of Trade, T.W. Engineering argues it was unable to

exploit the commercial expertise that it had invested in the joint venture with House of Trade. In relation to the loans by its director, T.W. Engineering was unable to provide any supporting evidence.

2. Analysis and valuation

93. The Panel finds that the claim for the loss of T.W. Engineering's share in the joint venture is not compensable, as it was not a direct result of Iraq's invasion and occupation of Kuwait.

94. T.W. Engineering's accounts do not refer to its investment in the joint venture with House of Trade or to the loans. The Panel, therefore, finds that T.W. Engineering did not submit sufficient evidence of its stated loss.

3. Recommendation

95. The Panel recommends no compensation for business transaction losses.

C. Loss of tangible property

1. Facts and contentions

96. T.W. Engineering seeks compensation in the amount of US$1,022,048 for the loss of plant and equipment owned by the joint venture with House of Trade.

97. T.W. Engineering stated that the equipment in question was either located at T.W. Engineering's sites or its manager's residence. T.W. Engineering stated that all equipment and other personal property was lost due to Iraq's invasion and occupation of Kuwait.

2. Analysis and valuation

98. T.W. Engineering submitted an inventory of the relevant equipment prepared by T.W. Engineering and notes prepared by its former on-site manager. T.W. Engineering's reply to the claim development letter included a statement dated 21 August 1998 from an engineer who allegedly worked with the joint venture from February 1988 to August 1990. The engineer stated that the description of the equipment in the manager's notes and the values attributed to that equipment appeared realistic.

99. T.W. Engineering did not provide sufficient evidence that it (in its capacity as a partner in the joint venture) was the owner of the property at the relevant time. Nor is there sufficient proof of the value of the equipment or the cause of the loss. There is no indication of the basis of the valuation, whether original cost less depreciation or a higher replacement value, and there is no indication of the age of the equipment. As in the claim for business transaction losses, the accounts submitted by T.W. Engineering do not refer to T.W. Engineering's investment in the joint

venture with House of Trade. The Panel also notes that there is no mention of the joint venture in T.W. Engineering's financial records.

100. T.W. Engineering's assertion that all evidence in support of its loss of tangible property was lost does not exonerate it from the requirement to produce the relevant records when, according to customary business practices, some of these business records should have been kept in locations other than Kuwait. Accordingly, the Panel finds that T.W. Engineering did not submit evidence to support its allegations of loss of tangible property.

3. Recommendation

101. The Panel recommends no compensation for loss of tangible property.

D. Payment or relief to others

102. T.W. Engineering seeks compensation in the amount of US$6,500 for amounts paid to three employees of either T.W. Engineering or the joint venture.

103. In his affidavit, the former managing director of T.W. Engineering stated that he advanced US$4,000 and US$625 to two employees to assist with their repatriation costs and other expenses after they were trapped in Kuwait without work and money. It is unclear for what purpose the remaining amount of US$1,875 was used.

104. T.W. Engineering did not provide evidence that the amounts were actually paid or that the amounts advanced by the managing director were reimbursed by T.W. Engineering. The Panel finds that T.W. Engineering did not submit sufficient evidence to support its allegations of expenses incurred for payment or relief to others.

105. The Panel recommends no compensation for payment or relief to others.

E. Other claims

1. Disruption of legal proceedings

106. On 12 September 1998, T.W. Engineering increased its original amount claimed from US$906,574 to US$2,064,388 for losses related to the disruption of legal proceedings against the liquidator of T.W. Engineering's previous joint venture partner, Contracting and Petroleum Works, with which T.W. Engineering entered into a joint venture agreement in 1984. Contracting and Petroleum Works went into liquidation some time during 1986 and T.W. Engineering commenced legal proceedings against the liquidator for recovery of amounts owed to it by Contracting and Petroleum Works. The proceedings allegedly came to a standstill due to Iraq's invasion and occupation of Kuwait.

107. The Kuwaiti court entered a judgement on 21 November [illegible] in favour of T.W. Engineering. T.W. Engineering seeks compensation for the delay in obtaining the court judgement, which it states was the result of the disruption of the Kuwaiti judicial system during the occupation and after the liberation of Kuwait.

108. The Panel finds that the causal link is too remote for the stated loss to be compensable. The amount sought is the result of work performed in 1986. T.W. Engineering provided no evidence to indicate whether the amount of the judgment or the ability of T.W. Engineering to collect on the judgment was affected by Iraq's invasion and occupation of Kuwait.

109. The Panel recommends no compensation for disruption of legal proceedings.

2. Destruction of documents

110. T.W. Engineering seeks compensation in the amount of [illegible] as a "contingent claim" in the event that the Commission decides that there is insufficient documentation to make an award of compensation. T.W. Engineering states that, "[t]he loss would be the inability effectively to pursue the main claim if the Commission felt that it was insufficiently documented".

111. The Panel finds that the inability of a claimant to provide sufficient evidence due to the alleged destruction of documents during Iraq's invasion and occupation of Kuwait does not afford a new ground for a claimant to succeed on an alternative claim. Compensating subsidiary claims of this nature would encourage claimants to circumvent the evidentiary standard required of claimants to demonstrate both the elements of actual loss and a direct causal link with Iraq's invasion and occupation of Kuwait.

112. The Panel recommends no compensation for the destruction of documents.

G. Recommendation for T.W. Engineering

Table 6. Recommended compensation for T.W. Engineering's claim

Claim element	Claim amount (US$)	Recommended compensation (US$)
Contract losses	380,330	nil
Business transaction losses	127,163	nil
Loss of tangible property	1,022,048	nil
Payment or relief to others	6,500	nil
Disruption of legal proceedings	2,944,389	nil
Total	**4,480,230**	nil

113. Based on its findings regarding T.W. Engineering's claim, the Panel recommends no compensation.

VI. STRUERS TECH A/S

114. Struers Tech A/S ("Struers") is a publicly owned Danish corporation that sells and distributes metallographic equipment through a worldwide network of dealers. Struers seeks compensation in the amount of US$39,765 for salary and financial support paid to its employee, a regional sales manager, who was detained in Kuwait from 5 August 1990 until 12 December 1990 and for "estimated lost business opportunities".

Table 9. Struers' claim

Claim element	Amount claimed (US$)
Payment or relief to others	
Salary	16,418
Financial support	6,650
Business transaction losses	16,697
Total	39,765

A. Payment or relief to others

1. Salary

(a) Facts and contentions

115. Struers seeks compensation in the amount of US$16,418 for salary paid to its employee during his period of detention in Iraq. In its reply to the claim development letter, Struers provided a statement from the employee which described the circumstances of his detention. Struers also provided a copy of the employment contract.

(b) Analysis and valuation

116. The Panel finds that Struers' employee was involuntarily detained in Baghdad between 5 August 1990 and 12 December 1990 during a visit to provide sales support to Struers' Iraqi dealer. The employee flew to Baghdad from Copenhagen on 27 July 1990 and intended to return to Copenhagen on 5 August 1990 but was held hostage in Baghdad until granted permission to leave on 12 December 1990. The employee returned to Copenhagen on a flight from Baghdad via Frankfurt. Struers provided copies of pages from the employee's passport, salary statements and the employee's statement as evidence.

117. The Panel finds that the salary costs are compensable because the losses are a direct result of Iraq's invasion and occupation of Kuwait. Struers provided evidence of the detention in Iraq as well as evidence of the amounts paid. Struers submitted copies of the gross monthly salary slips for its employee and calculated the total salary due for the period of detention as US$16,418.

(c) Recommendation

118. The Panel recommends compensation in the amount of US$16,418 for salary paid during detention.

2. Financial support during detention

(a) Facts and contentions

119. Struers seeks compensation in the amount of US$6,650 for three separate items relating to funds provided to the employee during his involuntary detention in Baghdad.

Table 10. Struers' claim for financial support

Loss item	Amount claimed (US$)
Financial support by the Danish Embassy	5,450
Transfer of money and costs involved	300
Outlay by private party	900
Total	6,650

120. In support of its claim for financial support given by the Danish Embassy in Baghdad, Struers provided:

(a) a document entitled "pledge to repay loan" dated 23 August 1990 and signed by the employee; and

(b) an invoice dated 14 November 1990 issued by the Foreign Ministry of Denmark and addressed to Struers requesting the company to repay the loan granted to the employee on 23 August 1990.

121. In support of its claim for transfer of money and costs involved, Struers provides a letter dated 2 November 1990 from Struers addressed to the Foreign Ministry of Denmark enclosing a cheque in settlement of the transfer of US$300 to its employee held in Baghdad.

122. In support of its claim for the outlay by a private party, Struers provided:

(a) a debit note from Unibank, Copenhagen branch, confirming payment of the amount of US$900 to an account with the British Bank of the Middle East, Amman branch, with specific references to the parties; and

(b) a letter dated 1 December 1991 from the private party that requests transfer by Struers to the dealer's account with the British Bank of the Middle East, Amman branch, of the amount of US$900.

(b) Analysis and valuation

123. In relation to financial support provided by the Government of Denmark, the secretariat performed a cross-check with the category "F" claim filed by the Ministry of Foreign Affairs of Denmark, which revealed that the Government of Denmark had filed a claim in connection with the evacuation of Struers' employee from Baghdad. One of the panels appointed to review claims in category "F" has already considered the claim filed by the Government of Denmark for the same amounts and has recommended that the Government of Denmark be paid compensation as set out in its report and recommendations on part one of the first instalment of category "F" claims (S/AC.26/1997/6).

124. The Panel finds that Struers' request for compensation for the losses incurred in connection with the evacuation of its employee (US$5,450 and US$300) duplicates the Government of Denmark's claim and is therefore not compensable.

125. The Panel finds that the losses incurred for food, accommodation and other expenses supplied by the private party does not duplicate any other claim filed with the Commission. Further, the Panel finds there is sufficient evidence that the outlay was made and subsequently reimbursed by Struers.

(c) Recommendation

126. The Panel recommends compensation in the amount of US$900 for financial support during detention.

3. Business transaction losses

127. Struers provided no explanation or evidence in support of its claim for estimated lost business opportunities other than to write the amount on the claim form. Struers failed to provide any additional information or documentation in reply to the claim development letter. Accordingly, the Panel finds that Struers failed to demonstrate the circumstances and amount of the claimed loss as required by article 35(3) of the Rules.

128. The Panel recommends no compensation for business transaction losses.

B. Recommendation for Struers

Table 11. Recommended compensation for Struers' claim

Claim element	Claim amount (US$)	Recommended compensation (US$)
Salary	16,418	16,418
Financial support	6,650	900
Business transaction losses	16,697	nil
Total	39,765	17,318

129. Based on its findings regarding Struers' claim, the Panel recommends compensation in the amount of US$17,318.

VII. DORSCH CONSULT INGENIEURGESELLSCHAFT MBH

130. Dorsch Consult Ingenieurgesellschaft mbH ("Dorsch"), a German company, seeks compensation in the amount of US$1,459,577 for engineering consultancy services provided pursuant to an agreement entered into on 30 January 1975 between Dorsch and the Ministry of Works and Housing of Iraq (the "Agreement").

131. Dorsch performed its obligations under the Agreement and was remunerated according to the terms of the Agreement until the mid-1980s, when Iraq ceased making payments.

132. In February 1990, Iraq allegedly acknowledged the unpaid contractual amounts after intervention by German official representatives and politicians. In letters dated 5 and 6 February 1990, Iraq directed the Rafidain Bank to transfer the settlement amounts to Dorsch. Dorsch stated that those transfers never took place as a result of Iraq's invasion of Kuwait and seeks compensation for those amounts.

133. The Agreement contains very limited information about the dates for the completion of the consultancy work. However, the correspondence from the Ministry of Works and Housing dated 5 and 6 February 1990 clearly directs the Rafidain Bank, Harithiya Branch, to transfer funds to Dorsch. From this evidence, the Panel draws the inference that all work under the Agreement was completed prior to February 1990. Accordingly, the claim relates entirely to work that was completed prior to 2 May 1990 and is not within the jurisdiction of the Commission.

134. Based on its findings regarding Dorsch's claim, the Panel recommends no compensation.

VIII. FUJITA CORPORATION

135. Fujita Corporation ("Fujita"), a Japanese construction company, seeks compensation in the amount of US$177,297 for costs incurred in evacuating 13 employees working in Iraq and for non-operative and idle costs.

136. Fujita was engaged by the Government of Iraq to work on the construction of the Expressway No. 1 in Iraq ("Project"). The construction of the Project was completed in December 1989 and, on 2 August 1990, the maintenance period of the Project contract was in operation.

137. In its supplement to the claim, Fujita added two further claims: a dismissal allowance for eleven Filipino engineers (US$33,000); and standby expenses for a project manager (US$ 13,802). The Panel finds that a claimant shall not be allowed to increase the amount of its claim in subsequent submissions. The Panel views supplements and replies to inquiries as a means by which a claimant may offer additional evidence in support of original losses, but a claimant may not add new loss items to the claim. Accordingly, the Panel does not consider the two new claims.

Table 12. Fujita's claim

Claim element	Amount claimed (US$)
Payment or relief to others	66,632
Business transaction losses	110,665
Total	177,297

A. Payment or relief to others

1. Facts and contentions

138. Fujita seeks compensation for the costs of evacuating two Japanese employees and eleven Filipino employees from Baghdad to their respective home countries. In addition, Fujita seeks compensation for the travel expenses of the Japanese employee who accompanied the Filipino staff from Amman to the Philippines, expenses of its head office in Tokyo and medical expenses for one Japanese employee.

Table 13. Fujita's claim for payment or relief to others

Loss item	Amount claimed (US$)
Travel expenses for 2 Japanese employees	12,819
Travel expenses for 11 Filipino employees	45,724
Travel expenses for escort	6,361
Head office expenses	338
Medical expenses	1,390
Total	66,632

2. Analysis and valuation

(a) Travel expenses

139. The two Japanese employees were on a business trip to Kuwait on 2 August 1990 and were held for more than one month as "guests" by the Iraqi authorities. Although they were released from "guest" status in September 1990, they were still refused exit visas for a period of time. One employee obtained an exit visa in October 1990, while the other received his in December 1990. The eleven Filipino employees returned to the Philippines on 24 August 1990 accompanied by a Japanese staff member who flew from Tokyo to Amman to escort them back to their country.

140. Fujita provided the names and passport details of all employees who were evacuated. Fujita also provided copies of receipts and invoices in relation to airfares, hotel and miscellaneous travel expenses, including expenses in the amount of US$543 for a "welcome home" dinner.

141. The Panel finds that Fujita submitted sufficient evidence of its travel expenses in the amount of US$64,890 incurred for the evacuation and repatriation of its employees. However, the expenses in the amount of US$543 for the "welcome home" dinner are not compensable.

142. The Panel recommends compensation in the amount of US$64,347 for travel expenses.

(b) Expenses of head office in Tokyo

143. Fujita seeks compensation in the amount of US$338 for head office expenses. Fujita, however, does not submit sufficient evidence of those expenses nor does it explain how those expenses are losses directly caused by Iraq's invasion and occupation of Kuwait.

144. The Panel recommends no compensation for head office expenses.

(c) Medical expenses

145. Fujita states that a Japanese employee, forced to stay in Iraq for more than two months, had to be hospitalized upon his return to Japan. Fujita provides no further information or documentation in respect of this loss. The Panel finds that Fujita did not submit sufficient evidence in support of the costs incurred for medical expenses.

146. The Panel recommends no compensation for medical expenses.

3. Recommendation

147. The Panel recommends compensation in the amount of US$64,347 for payment or relief to others.

B. Business transaction losses

1. Facts and contentions

148. Fujita seeks compensation in the amount of US$110,665 for costs incurred during a "non-operative and idle period" from 2 August 1990 to 2 March 1991. Fujita stated it was unable to carry on any business activities during that period but it was required to maintain the office and pay salaries for the local employees as follows:

Table 14. Fujita's claim for business transaction losses

Loss item	Amount claimed (US$)
Salaries of local employees	51,129
Office rent in Iraq	19,053
Miscellaneous office expenses	14,448
Salaries of detained employees	26,035
Total	110,665

149. In support of its claim for non-operative and idle costs, Fujita provided copies of payment vouchers, receipts and invoices. However, according to Fujita, many other relevant documents relating to this portion of the claim were kept in Fujita's Baghdad office. Consequently, Fujita stated that it was unable to provide any additional supporting documentation.

2. Analysis and valuation

(a) Salaries of local employees

150. Fujita submitted sufficient supporting evidence for only a portion of the salaries of its local staff during the period 2 August 1990 to 2 March 1991. The Panel finds that Fujita submitted payment vouchers in the total amount of US$31,767 for the salaries of its office staff for the months

August-November 1990 and for the salary of its night watchman for this same period and January and February of 1991. However, Fujita did not submit sufficient documentation to support the stated loss in the amount of US$19,362 for salaries of its office staff for December of 1990 and January 1991 to March 1991.

151. The Panel recommends compensation in the amount of US$31,767 for the salaries of local employees.

(b) Office rent in Iraq

152. The Panel finds that Fujita's claim for office rent in Baghdad is not compensable because the rental payments would have been incurred by Fujita regardless of Iraq's invasion and occupation of Kuwait. Furthermore, Fujita provided no evidence in support of this portion of its claim. Fujita did not provide a copy of the lease and the submitted rental receipt is inadequate in description.

153. The Panel recommends no compensation for residence and office rent.

(c) Miscellaneous office expenses

154. Fujita seeks compensation for the cost of electricity, telephone charges, travel expenses and food and fuel costs. Fujita provided no evidence in support of miscellaneous office expenses because all of the relevant records were kept in its Baghdad office. Fujita also failed to demonstrate that these office expenses were in excess of the expenses that it would have incurred but for Iraq's invasion and occupation of Kuwait. The Panel finds that these expenses are fixed costs that would have occurred regardless of Iraq's invasion and occupation of Kuwait.

155. The Panel recommends no compensation for miscellaneous office expenses.

(d) Salaries of detained employees

156. Fujita seeks compensation in the amount of US$26,035 for the salaries of two Japanese employees who were detained in Iraq as described in paragraph 139, supra. Fujita submitted sufficient evidence of this loss, including the relevant salary statements and pay slips.

157. The Panel finds that the salaries of foreign staff working in Iraq and Kuwait, which were paid after productive work had ceased until their repatriation, are compensable.

158. The Panel recommends compensation in the amount of US$26,035 for the salaries of foreign staff.

/...

3. Recommendation

159. The Panel recommends compensation in the amount of US$57,802 for business transaction losses.

C. Recommendation for Fujita

Table 15. Recommended compensation for Fujita's claim

Claim element	Claim amount (US$)	Recommended compensation (US$)
Payment of relief to others	66,632	64,347
Business transaction losses	110,665	57,802
Total	177,297	122,149

160. Based on its findings regarding Fujita's claim, the Panel recommends compensation in the amount of US$122,149.

IX. KUWAIT ZARS LINK

161. On 5 October 1998, the Commission received a notice of withdrawal of the claim by Kuwait Zars Link from the Government of the Russian Federation. In the light of this communication, the Panel issued a procedural order on 23 November 1998, pursuant to article 42 of the Rules, acknowledging the withdrawal and terminating the Panel's proceedings with respect to the claim by Kuwait Zars Link.

X. AL MANBAA DRILLING COMPANY

162. Al Manbaa Drilling Company ("Al Manbaa"), a United Arab Emirates company, seeks compensation in the amount of US$298,804 for tangible property losses incurred in its capacity as a sub-contractor engaged to work on construction projects in Kuwait.

163. The secretariat sent an informal notification under article 15 of the Rules to Al Manbaa on 26 March 1998 requesting that Al Manbaa rectify certain formal deficiencies in its claim submission on or before 25 September 1998. Al Manbaa did not submit a reply.

164. On 5 October 1998, the secretariat sent a formal notification under article 15 of the Rules to Al Manbaa. Although Al Manbaa did not submit a category "E" claim form or a statement of claim, it did submit documents related to its claim. Al Manbaa submitted a copy of a sub-contract agreement entered into between Al Manbaa and a Kuwaiti contractor on 27 January 1990 pursuant to which Al Manbaa agreed to carry out work on a road-crossing. Al Manbaa also provided copies of a general co-operation and an agency agreement, each dated 20 April 1990, entered into between Al Manbaa and a Kuwaiti contractor pursuant to which Al Manbaa agreed to carry out jacking, soil stabilization and mining-related services Al Manbaa also provided copies of invoices evidencing the purchase of certain steel piping and jacking equipment between February and May 1990.

165. The Panel finds that Al Manbaa did not submit sufficient information or documentation to support its asserted tangible property losses.

166. Based on its findings regarding Al Manbaa's claim, the Panel recommends no compensation.

XI. SUMMARY OF RECOMMENDATIONS BY CLAIMANT

167. Based on the foregoing, the Panel recommends the following amounts of compensation for direct losses suffered by the claimants as a result of Iraq's invasion and occupation of Kuwait:

(a) GIK Hidrogradnja Civil Engineering & General Contracting Company (Bosnia and Herzegovina): nil;

(b) Cansult Group Limited (Canada): US$148,805;

(c) T.W. Engineering Limited (Cyprus): nil;

(d) Struers Tech A/S (Denmark): US$17,318;

(e) Dorsch Consult Ingenieurgesellschaft mbH (Germany): nil;

(f) Fujita Corporation (Japan): US$122,149; and

(g) Al Manbaa Drilling Company (United Arab Emirates): nil.

Geneva, 15 December 1998

(Signed) Mr. Werner Melis
Chairman

(Signed) Mr. David Mace
Commissioner

(Signed) Mr. Sompong Sucharitkul
Commissioner

Annex IV

Report and recommendations made by the Panel of Commissioners concerning the fifth instalment of E3 claims*

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Introduction

1. The Governing Council of the United Nations Compensation Commission (the "Commission") appointed the present Panel of Commissioners (the "Panel"), composed of Messrs. John Tackaberry (Chairman), Pierre Genton and Vinayak Pradhan, at its twenty-eighth session in June 1998, to review construction and engineering claims filed with the Commission on behalf of corporations and other legal entities in accordance with the relevant Security Council resolutions, the Provisional Rules of Claims Procedure (S/AC.26/1992/10) (the "Rules") and other Governing Council decisions. This report contains the recommendations to the Governing Council by the Panel, pursuant to article 38(e) of the Rules, concerning the claims of thirteen corporations included in the fifth instalment. Each of the claimants seeks compensation for loss, damage or injury allegedly arising out of Iraq's 2 August 1990 invasion and subsequent occupation of Kuwait.

2. A fourteenth claim initially included in this instalment, that of C. Haushahn GmbH & Co.("Haushahn"), filed with the Commission by the Government of the Federal Republic of Germany, was also before the Panel but was withdrawn by Haushahn during the proceedings. (See paragraph 230, infra).

3. Each of the claimants had the opportunity to provide the Panel with information and documentation concerning their claims. As discussed more fully in chapter I, the Panel has considered evidence from the claimants and the responses of Governments to the reports of the Executive Secretary issued pursuant to article 16 of the Rules. The Panel has retained consultants with expertise in valuation and construction and engineering. The Panel has also taken note of certain findings by other panels of Commissioners, approved by the Governing Council, regarding the interpretation of relevant Security Council resolutions and Governing Council decisions. Finally, the Panel was mindful of its function to provide an element of due process in the review of claims filed with the Commission.

I. PROCEDURAL HISTORY

A. The nature and purpose of the proceedings

4. The status and functions of a Panel of Commissioners operating within the framework of the Commission is set forth in the report of the Secretary-General pursuant to paragraph 19 of Security Council resolution 687 (1991) dated 2 May 1991 (S/22559). In his report, the Secretary-General described the function of the Commission as follows:

> "The Commission is not a court or an arbitral tribunal before which the parties appear; it is a political organ that performs an essentially fact-finding function of examining claims, verifying

> their validity, evaluating losses, assessing payments and resolving disputed claims. It is only in this last respect that a quasi-judicial function may be involved. Given the nature of the Commission, it is all the more important that some element of due process be built into the procedure. It will be the function of the commissioners to provide this element." (S/22559, paragraph 20).
>
> "The processing of claims will entail the verification of claims and evaluation of losses and the resolution of any disputed claims. The major part of this task is not of a judicial nature; the resolution of disputed claims would, however, be quasi-judicial. It is envisaged that the processing of claims would be carried out principally by the commissioners. Before proceeding to the verification of claims and evaluation of losses, however, a determination will have to be made as to whether the losses for which claims are presented fall within the meaning of paragraph 16 of resolution 687 (1991), that is to say, whether the loss, damage or injury is direct and as a result of Iraq's unlawful invasion and occupation of Kuwait." (S/22559, paragraph 25).

5. The Panel is entrusted with three tasks in the present proceedings. First, the Panel is required to determine whether the various types of losses alleged by the claimants are within the jurisdiction of the Commission, i.e., whether the losses were caused directly by Iraq's invasion and occupation of Kuwait. Secondly, the Panel has to verify whether the alleged losses that are in principle compensable have in fact been incurred by a given claimant. Thirdly, the Panel is required to determine whether these compensable losses were incurred in the amounts claimed, and if not, the appropriate quantum for the loss based on the evidence before the Panel.

6. In fulfilling these tasks, the Panel considered that the vast number of claims before the Commission and the time limits in the Rules necessitated the use of an approach which is unique, but has principal characteristics rooted in generally accepted procedures for claim determination, both domestic and international. This involves the employment of well established general legal standards of proof and valuation methods in a process that is generally documentary rather than oral and inquisitorial rather than adversarial. This method carefully balances the twin objectives of speed and accuracy and permits the efficient resolution of the thousands of claims filed by corporations with the Commission.

B. The procedural history of the claims in the fifth instalment

7. The claims submitted to the Panel in this instalment and addressed in this report were selected by the secretariat of the Commission from among the construction and engineering claims (the "'E3' Claims") on the basis of

criteria established under the Rules. These include the date of filing and compliance by claimants with the requirements established for claims submitted by corporations and other legal entities (the "category 'E' claims").

8. On 29 July 1998, the Panel issued a procedural order relating to the claims. None of the claims presented complex issues, voluminous documentation or extraordinary losses that would require the Panel to classify any of them as unusually large or complex within the meaning of article 38(d) of the Rules. The Panel thus had an obligation to complete its review of the claims within 180 days of the date of the procedural order, pursuant to article 38(c) of the Rules.

9. In view of the review period available and the often sparse information and evidence submitted by claimants, the Panel determined that it was able to evaluate the claims without additional information or documents from the Government of Iraq. In particular, due process, the provision of which is the responsibility of the Panel, has been achieved through the critical approach to the evidence adopted by the Panel before recommending payment of compensation.

10. Prior to presenting the fifth instalment to the Panel, the secretariat performed a preliminary assessment of each claim in order to determine whether the claim met the formal requirements established by the Governing Council in article 14 of the Rules. Where claims did not meet the formal requirements, the claimant was notified of the deficiencies and invited to provide the necessary information.

11. Further, the secretariat's review of the legal and evidentiary basis of each claim identified specific questions as to the evidentiary support for the alleged loss and also identified areas of the claim in which further information and documentation was required. Consequently, questions and requests for additional documentation were transmitted to the claimants pursuant to the Rules. Upon receipt of the responses and additional documentation, a detailed factual and legal analysis of each claim was conducted and presented to the Panel pursuant to article 32 of the Rules.

12. That analysis highlighted the fact that many claimants lodged little material of a genuinely probative nature when they initially filed their claims. It may be that the claimants did not consider it likely that the process would yield any result in the foreseeable future. Further, it appears that many claimants did not retain clearly relevant documentation and were unable to provide such documentation when requested. Indeed, some claimants have appeared to destroy documents in the course of a normal administrative process without distinguishing between documents with no long term purpose and documents necessary to support the claims which had already been put forward. In addition, some claimants did not think it

worthwhile to respond to requests for further information and evidence. The consequence has inevitably been that for a large number of loss elements the Panel has been unable to recommend any compensation.

13. As already noted, the Panel performed a thorough and detailed factual and legal review of the claims. The Panel has assumed an investigative role that goes beyond reliance merely on information and argument supplied with the claims as presented. After a review of the relevant information and documentation, the Panel made initial determinations as to the compensability of the loss elements of each claim. The Panel then directed its consultants to prepare comprehensive reports on each of the claims, to state opinions on the appropriate valuation of each of the compensable losses and to set forth the evidence supporting those opinions.

14. In drafting this report, the Panel has not included specific citations from restricted or non-public documents that were produced or made available to it for the completion of its work. At the same time, the Panel has ensured that this report clearly indicates those parts of the claims that were found to be outside the jurisdiction of the Commission.

C. The claimants

15. This report contains the Panel's findings with respect to the following claims:

(a) Šipad Invest OOUR Export Inženjering, a public sector enterprise organized under the laws of Bosnia and Herzegovina, which seeks compensation in the total amount of US$4,743,760 for losses allegedly caused directly by Iraq's invasion and occupation of Kuwait;

(b) Bimont d.d. Rijeka, a corporation organized under the laws of the Republic of Croatia, which seeks compensation in the total amount of US$271,180 for losses allegedly caused directly by Iraq's invasion and occupation of Kuwait;

(c) YIT Corporation, a corporation organized under the laws of the Republic of Finland, which seeks compensation in the total amount of US$2,399,593 for losses allegedly caused directly by Iraq's invasion and occupation of Kuwait;

(d) East Hungarian Water Construction Company, a corporation organized under the laws of the Republic of Hungary, which seeks compensation in the total amount of US$3,928,536 for losses allegedly caused directly by Iraq's invasion and occupation of Kuwait;

(e) Toshiba Corporation, a corporation organized under the laws of Japan, which seeks compensation in the total amount of US$1,477,196 for

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losses allegedly caused directly by Iraq's invasion and occupation of Kuwait;

(f) Munir Said Moh'd Dawud Samara (Emirate General Contracting Establishment), a Jordanian individual who is a shareholder in Emirate General Contracting Establishment, a Jordanian-registered partnership, who seeks compensation in the total amount of US$3,814,189 for his share of the partnership losses allegedly caused directly by Iraq's invasion and occupation of Kuwait;

(g) Eben S.A., a corporation organized under the laws of the Kingdom of Morocco, which seeks compensation in the total amount of US$2,112,600 for losses allegedly caused directly by Iraq's invasion and occupation of Kuwait;

(h) Dutch Agro Products B.V., a corporation organized under the laws of the Kingdom of the Netherlands, which seeks compensation in the total amount of US$89,627 for losses allegedly caused directly by Iraq's invasion and occupation of Kuwait;

(i) EEI Corporation, a corporation organized under the laws of the Republic of the Philippines, which seeks compensation in the total amount of US$998,872 for losses allegedly caused directly by Iraq's invasion and occupation of Kuwait;

(j) Gestiones Reunidas de Construcción S.A. (GRECSA), a corporation organized under the laws of the Kingdom of Spain, which seeks compensation in the total amount of US$4,179,240 for losses allegedly caused directly by Iraq's invasion and occupation of Kuwait;

(k) Kvaerner Generator AB, a corporation organized under the laws of the Kingdom of Sweden, which seeks compensation in the total amount of US$697,836 for losses allegedly caused directly by Iraq's invasion and occupation of Kuwait;

(l) Inpro AG K. Wirth, a corporation organized under the laws of the Swiss Confederation, which seeks compensation in the total amount of US$648,921 for losses allegedly caused directly by Iraq's invasion and occupation of Kuwait; and

(m) W.J. White Ltd., a corporation organized under the laws of the United Kingdom of Great Britain and Northern Ireland, which seeks compensation in the total amount of US$183,998 for losses allegedly caused directly by Iraq's invasion and occupation of Kuwait.

II. LEGAL FRAMEWORK

A. Applicable law

16. In paragraph 16 of resolution 687 (1991), the Security Council:

> "Reaffirms that Iraq, without prejudice to the debts and obligations of Iraq arising prior to 2 August 1990, which will be addressed through the normal mechanisms, is liable under international law for any direct loss, damage, including environmental damage and the depletion of natural resources, or injury to foreign Governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait".

17. The sources of the law and principles to be applied by the Panel are set out in article 31 of the Rules:

> "In considering the claims, Commissioners will apply Security Council resolution 687 (1991) and other relevant Security Council resolutions, the criteria established by the Governing Council for particular categories of claims, and any pertinent decisions of the Governing Council. In addition, where necessary, Commissioners shall apply other relevant rules of international law."

B. Liability of Iraq

18. When adopting resolution 687 (1991), the Security Council acted under chapter VII of the Charter of the United Nations which provides for maintenance or restoration of international peace and security. The Security Council also acted under chapter VII when adopting resolution 692 (1991), in which it decided to establish the Commission and the Compensation Fund referred to in paragraph 18 of resolution 687 (1991). Specifically, under resolution 687 (1991), the issue of Iraq's liability for losses falling within the Commission's jurisdiction is resolved and is not subject to review by the Panel.

19. In this context, it is necessary to address the meaning of the term "Iraq". In Governing Council decision 9 (S/AC.26/1992/9) and other Governing Council decisions, the word "Iraq' was used to mean the Government of Iraq, its political subdivisions, or any agency, ministry, instrumentality or entity (notably public sector enterprises) controlled by the Government of Iraq. For the purposes of the present report, the Panel goes further. It notes that, at the time of Iraq's invasion and occupation of Kuwait, the Government of Iraq regulated all aspects of economic life other than some peripheral agriculture, services and trade. (See Iraq Country Profile 1990-91, The Economist Intelligence Unit, London, 1990, p. 10.) In light of the term as used in decision 9 and the wider analysis referred to above, the Panel adopts the presumption that for contracts

performed in Iraq and at issue in the present claims, the other contracting party was an Iraqi Government entity.

C. The "arising prior to" clause

20. The Panel recognizes that it is difficult to establish a fixed date for the exclusion of its jurisdiction that does not contain an arbitrary element. With respect to the interpretation of the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991), the Panel of Commissioners that reviewed the first instalment of "E2" claims concluded that the "arising prior to" clause was intended to exclude from the jurisdiction of the Commission the foreign debt of Iraq existing at the time of Iraq's invasion of Kuwait. As a result, the "E2" Panel found that:

> "In the case of contracts with Iraq, where the performance giving rise to the original debt had been rendered by a claimant more than three months prior to 2 August 1990, that is, prior to 2 May 1990, claims based on payments owed, in kind or in cash, for such performance are outside of the jurisdiction of the Commission as claims for debts or obligations arising prior to 2 August 1990." (S/AC.26/1998/7, paragraph 90).

21. Persuaded by practical considerations that a three month delay period adequately reflects the business practices prevailing in Iraq at the time and does not depart from ordinary commercial practices, the Panel adopts these conclusions for the "E3" claims. Therefore, for the purposes of this and future reports, the Panel interprets the "arising prior to" clause in the following manner:

(a) the phrase "without prejudice to the debts and obligations of Iraq arising prior to 2 August 1990, which will be addressed through normal mechanisms" was intended to have an exclusionary effect on the Commission's jurisdiction, i.e., such debts and obligations are not compensable by the Commission;

(b) the limitation contained in the clause "arising prior to 2 August 1990" was intended to leave unaffected the debts and obligations of Iraq which existed prior to Iraq's invasion and occupation of Kuwait; and

(c) the terms "debts" and "obligations" should be given the customary and usual meanings applied to them in ordinary discourse.

22. In the context of (b) above, it is the view of the Panel that the use of a three month payment delay period to define the jurisdictional period is generally reasonable and not inconsistent with ordinary commercial practices. Thus, the Panel finds that, in general, a claim relating to a "debt or obligation arising prior to 2 August 1990" means a debt and/or

obligation that is based on work performed or services rendered prior to 2 May 1990.

D. Application of the "direct loss" requirement

23. Paragraph 21 of Governing Council decision 7 (S/AC.26/1991/7/Rev.1) is the seminal rule on "directness" for category "E" claims. It provides in relevant part that compensation is recoverable for:

> "... any direct loss, damage, or injury to corporations and other entities as a result of Iraq's unlawful invasion and occupation of Kuwait. This will include any loss suffered as a result of:
>
> (a) Military operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991;
>
> (b) Departure of persons from or their inability to leave Iraq or Kuwait (or a decision not to return) during that period;
>
> (c) Actions by officials, employees or agents of the Government of Iraq or its controlled entities during that period in connection with the invasion or occupation;
>
> (d) The breakdown of civil order in Kuwait or Iraq during that period; or
>
> (e) Hostage-taking or other illegal detention."

24. The text of paragraph 21 of decision 7 is not exhaustive and leaves open the possibility that there may be causes of "direct loss" other than those specified. Paragraph 6 of decision 15 of the Governing Council (S/AC.26/1992/15) confirms that there "will be other situations where evidence can be produced showing claims are for direct loss, damage or injury as a result of Iraq's unlawful invasion and occupation of Kuwait". Should that be the case, the claimants will have to prove specifically that a loss that was not suffered as a result of one of the five categories of events set out in paragraph 21 of decision 7 is nevertheless "direct". Paragraph 3 of decision 15 emphasizes that for any alleged loss or damage to be compensable, the "causal link must be direct". (See also paragraph 9 of decision 9).

25. While the phrase "as a result of" contained in paragraph 21 of decision 7 is not further clarified, Governing Council decision 9 provides guidance as to what may be considered "losses suffered as a result of" Iraq's invasion and occupation of Kuwait. It identifies the three main categories of loss types in the "E" claims: losses in connection with contracts, losses relating to tangible assets and losses relating to income-producing properties. Thus, decisions 7 and 9 provide specific

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guidance to the Panel as to how the "direct loss" requirement must be interpreted.

26. In the light of the decisions of the Governing Council identified above, the Panel has reached certain conclusions as to the meaning of "direct loss". These conclusions are set out in the following paragraphs.

27. With respect to physical assets in Iraq or in Kuwait as at 2 August 1990, a claimant can prove a direct loss by demonstrating two factors. First, that the breakdown in civil order in these countries, which resulted from Iraq's invasion and occupation of Kuwait, caused the claimant to evacuate its employees. Secondly, that the evacuation resulted in the abandonment of the claimant's physical assets in Iraq or in Kuwait.

28. With respect to losses relating to contracts to which Iraq was a party, Iraq may not rely on _force majeure_ or similar legal principles as a defense to its obligations.

29. With respect to losses relating to contracts to which Iraq was not a party, a claimant may prove a direct loss if it can establish that Iraq's invasion and occupation of Kuwait or the breakdown in civil order in Iraq or Kuwait following Iraq's invasion caused the claimant to evacuate the personnel needed to perform the contract.

30. In the context of the losses set out above, reasonable costs which have been incurred in mitigating those losses are direct losses. The Panel bears in mind that the claimant was under a duty to mitigate any losses that could have been reasonably avoided after the evacuation of its personnel from Iraq or Kuwait.

31. In the view of the Panel, the loss of use of funds on deposit in Iraqi banks is not a direct loss unless the claimant can demonstrate that Iraq was under a contractual or other specific duty to exchange those funds for convertible currencies and authorized the transfer of the converted funds out of Iraq, and that this exchange and transfer was prevented by Iraq's invasion and occupation of Kuwait.

32. These findings regarding the meaning of "direct loss" are not intended to resolve every issue that may arise with respect to the Panel's interpretation of Governing Council decisions 7 and 9. Rather, these findings are intended as initial parameters for the review and evaluation of the claims in the present report.

E. Date of loss

33. There is no general principle with respect to the date of loss. The date of loss needs to be addressed on a case by case basis, and the individual loss elements of each claim may give rise to different dates

when analyzed strictly. Applying a different date to each loss element within a particular claim is inefficient and, accordingly, the Panel has decided to determine a single date of loss for each claim, which in most cases coincides with the date of the collapse of the project.

F. Currency exchange rate

34. While many of the costs incurred by the claimants were denominated in currencies other than United States dollars, the Commission issues its awards in that currency. Therefore the Panel is required to determine the appropriate rate of exchange to apply to losses expressed in other currencies.

35. Several of the claimants have argued that their contracts contain currency exchange rates and that these contractually agreed exchange rates should therefore apply to all of their losses. The contract exchange rate was usually higher than the prevailing commercial rate on 2 August 1990 or the date the alleged losses occurred. The Panel agrees that, as a general rule, the exchange rate set forth in the contract is the appropriate rate for losses under the relevant contracts because this was specifically agreed to by the parties.

36. For losses that are not contract based, however, a contract rate is not an appropriate rate of exchange. In the claims before the Panel, the valuation of tangible assets was not contemplated by the parties when agreeing to an exchange rate in the underlying contracts. In addition, these types of items are readily traded on the international markets. The United Nations Monthly Bulletin of Statistics has been the source of commercial exchange rates for all preceding Commission awards. Therefore, for non-contractual losses, the Panel finds the appropriate exchange rate to be the prevailing commercial rate, as evidenced by the United Nations Monthly Bulletin of Statistics, on the date of loss.

G. Interest

37. On the issue of the appropriate interest rate to be applied, the relevant Governing Council decision is decision 16 (S/AC.26/1992/16). According to that decision, "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award". In decision 16 the Governing Council further specified that "[i]nterest will be paid after the principal amount of awards", while postponing any decision on the methods of calculation and payment.

38. The Panel finds that interest shall run from the date of loss.

H. Evacuation losses

39. In accordance with paragraph 21(b) of decision 7 of the Governing Council, the Panel finds that the costs associated with evacuating and repatriating employees from Iraq between 2 August 1990 and 2 March 1991 are compensable to the extent that such costs are proven by the claimant and are reasonable in the circumstances. Urgent temporary liabilities and extraordinary expenses relating to evacuation and repatriation, including transportation, food and accommodation are, in principle, compensable.

I. Consultants' evaluation

40. The valuation analysis used by the consultants ensures clarity and consistency in the application of certain valuation principles to the construction and engineering claims.

41. After receipt of all claim information and evidence, the consultants applied the verification program. Each loss element was individually analysed according to a set of instructions provided by the Panel. These instructions required the consultant to ask each claimant the same questions concerning the evidence presented. The consultant's analysis resulted in one of the following recommendations: (a) full compensation for the alleged loss; (b) an adjustment to the amount of the alleged loss; or (c) rejection of the alleged loss. In those instances where the consultants were unable to respond decisively to a review question, the issue was brought to the attention of the Panel for further discussion and development prior to a valuation of the loss element.

42. The consultants presented claim-specific reports for each claim to the Panel. The reports included, but were not limited to:

(a) the claimant's name and identifying claim number;

(b) a table detailing the amount claimed in United States dollars (or other currency shown on the claim form) by loss element and total;

(c) a brief description of the nature of the claimant's business and the project for which the claimant performed work, if any;

(d) the date that the claimant ceased work and, if relevant, the date that the claimant recommenced work;

(e) an analysis of the evidence submitted and an explanation of the basis of the valuation of each loss element; and

(f) a recommendation as to the quantum of the alleged loss, if any, by category of loss along with a total for all categories.

43. Upon receipt of the report from the consultants, the Panel reviewed the valuation analysis in conjunction with the claim analysis prepared by the secretariat.

J. Evidentiary requirements

44. Pursuant to article 35(3) of the Rules, corporate claims must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and amount of the claimed loss. The Governing Council has made it clear in paragraph 5 of decision 15 that, with respect to business losses, there "will be a need for detailed factual descriptions of the circumstances of the claimed loss, damage or injury" in order to justify a recommendation for compensation.

45. The category "E" claim form requires each corporation and other legal entity that has filed a claim to submit with its claim form "a separate statement explaining its claim ('Statement of Claim'), supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and the amount of the claimed loss". In addition, claimants were instructed to include within the statement of claim the following particulars:

(a) the date and type of each element of loss together with the basis of the Commission's jurisdiction;

(b) the facts supporting each element of loss;

(c) the legal basis for recovery of each element of loss; and

(d) the quantum of each element as well as an explanation of how the quantum was calculated.

46. In those cases where the original submission of the claim inadequately supported the alleged loss, the secretariat prepared and issued a written communication to the claimants requesting specific information and documentation regarding the loss. In reviewing the responses, the Panel noted that in many cases the claimants still did not provide sufficient evidence to support the alleged losses.

47. The Panel takes this opportunity to emphasize that what is required of a claimant by article 35(3) of the Rules is the presentation to the Commission and the Panel of persuasive evidence that must go to both causation and quantum. The Panel's interpretation of what is appropriate and sufficient evidence will vary according to the nature of the claim. That standard is also affected by the fact that, in the case of the claims which are the subject of this report, Iraq's input is limited to the participation defined by article 16 of the Rules. In implementing this

approach, the Panel applied the relevant principles extracted from those within the corpus of principles referred to in article 31 of the Rules.

III. THE CLAIM OF ŠIPAD INVEST OOUR EXPORT INŽENJERING

48. Šipad Invest OOUR Export Inženjering of Bosnia and Herzegovina ("Šipad") describes itself as a public sector enterprise dealing with engineering, construction and furnishing of hotels, hospitals, tourist settlements, residential houses, schools, and stores. Šipad stated it incurred losses on three separate phases of the Aradet Housing Complex in Baiji, Iraq: (a) construction works ("Project A"); (b) furnishing ("Project B"); and (c) the second stage ("Project C"), (collectively the "Project").

49. Šipad seeks compensation in the amount of US$4,743,760 for unpaid contractual amounts together with interest, loss of tangible property, evacuation of personnel and head office and branch office expenses.

A. Contract losses

1. Facts and contentions

50. Šipad seeks compensation in the amount of US$1,305,203 for contract losses under the contracts for Projects A, B and C.

51. Šipad also seeks compensation in the amount of US$1,417,387 for interest on the outstanding contractual amounts. Šipad's claim for interest was calculated at the rate of 12 per cent per annum. Šipad stated that this is the appropriate rate applicable to overdraft credits in Iraq on unpaid contractual amounts from 2 August 1990 for Projects A and B, and from 20 December 1990 for Project C.

52. For the reasons stated in paragraph 37, the Panel does not address the issue of compensability of claims for interest.

(a) Project A

53. The contract for the construction of fifty residential units and a recreation centre at the Aradet Housing Complex in Baiji was signed on 1 October 1988 between Šipad and the Employer, the Arab Company for Detergent Chemicals, Baghdad (the "Project A Contract"). Šipad commenced performance under the Project A Contract in November 1988. With the exception of the recreation centre, Šipad completed performance in March 1990. The "taking over certificate" for the Project (with the exception of the recreation centre) was issued on 1 April 1990, but was effective as of 31 December 1989. The recreation centre was completed in August 1990 and the final acceptance certificate was allegedly not issued due to Iraq's invasion and occupation of Kuwait.

54. Šipad seeks compensation under the Project A Contract in the amount of US$439,090 for unpaid work and for the performance bond and retention money that were not released by the Employer when Šipad completed the correction of certain faults in the recreation centre.

(b) Project B

55. The contract for the supply and installation of furniture at the Aradet Housing Complex in Baiji (Project B) was signed on 10 August 1989 between Šipad and the Employer (the "Project B Contract"). Šipad completed the furnishing of the fifty residential units pursuant to the Project B Contract in January 1990. Šipad was performing the remaining portion of the Project B Contract, which related to the furnishing of a recreation centre, at the time of Iraq's invasion of Kuwait. Šipad alleged that, although it completed this work, no payment was received.

56. Šipad seeks compensation under the Project B Contract in the amount of US$33,500 for the unpaid portion of the contract that was due upon final approval of Project B (less the value of certain items of furniture that were rejected due to faults and damage).

(c) Project C

57. The contract for the second stage of the Aradet Housing Complex at Baiji (the "Project C Contract") was signed on 27 March 1990 between Šipad and the Employer as an addendum to the Project A Contract. Under clause 3 of the Project C Contract, Šipad was required to complete and hand over the construction works within 280 days of the date of the Project C Contract. Šipad commenced preparation of the project site immediately after signature of the Project C Contract. On 8 December 1990, the parties entered into a protocol for the suspension of Project C. Šipad alleged that its performance under the Project C Contract continued until 20 December 1990, when the last of Šipad's crew left Iraq. At the time Project C was suspended, Šipad had issued three progress payment certificates that had not been paid by the Employer.

58. Šipad seeks compensation under Project C in the amount of US$304,244 for payment of three progress certificates and other unpaid contractual amounts. Šipad included in its claim for Project C a claim for loss of expected profits in the amount of US$528,369 (calculated at the rate of 12 per cent of the contract value).

59. The Panel notes that Šipad drew the Panel's attention to the fact that Šipad's ability to produce relevant documents was severely hampered by the effects of the civil unrest in the former Yugoslavia and especially in Sarajevo. While having sympathy with the hardship faced by Šipad, the Panel notes that there is nothing in Security Council resolution 687 (1991) that entitles the Panel to take account of these special circumstances. Destruction of primary evidence merely gives rise to a need for a claimant to produce secondary evidence. However, such secondary evidence is also lacking in this claim.

2. Analysis and valuation

60. The Panel finds that the Employer in all three projects, the Arab Company for Detergent Chemicals, Baghdad, is an agency of the State of Iraq.

(a) Project A Contract

61. Šipad completed the original works under the Project A Contract in March 1990, at which time the Employer issued the "taking over certificate". The taking over certificate was dated 1 April 1990, but was effective as of December 1989. Payments under the Project A Contract were in conformance with the terms of that contract.

62. Under the terms of the Project A Contract, 5 per cent of the Iraqi dinar portion and 2.5 per cent of the United States dollar portion of the retention money, in the amount of ID 29,262 and US$87,191, was due upon issue of the taking over certificate. The amounts to be so released were obligations of the Employer that arose, at the latest, on 1 April 1990, the date of the taking over certificate. The retention money due on issue of the taking over certificate is thus a debt that arose prior to 2 May 1990 and, therefore, is not within the jurisdiction of the Commission.

63. The correspondence between Šipad and the Employer indicates that the Employer withheld the sum of US$258,000 for correction work to be performed with respect to the recreation center, sewage system, telephone exchange and work at the campsite after issue of the taking over certificate.

64. On 21 August 1990 the Employer sent a facsimile to Šipad which stated that the correction works had been inspected on 20 August 1990. The Employer agreed to release all of the amounts withheld, with the exception of amounts that it intended to further withhold pending correction of certain faults in the recreation centre. There is no evidence that any portion of the US$250,000 released by the Employer was paid to Šipad.

65. On 20 December 1990, in a letter addressed to the Employer, Šipad requested payment of the retention money as well as the additional amount withheld for the correction works. The final progress payment certificate enclosed with the letter was signed by the Project manager and Šipad's Baghdad branch manager. The Employer responded to Šipad's letter by a telex dated 30 December 1990 in which it stated that there were still several items that had not been completed satisfactorily, and, accordingly, it was unable to issue the final acceptance certificate.

66. The Panel finds that there is no evidence that non-payment of the US$250,000 withheld for corrective work was the direct result of Iraq's invasion and occupation of Kuwait.

67. The Panel recommends no compensation for Project A losses.

(b) Project B Contract

68. Šipad alleges a loss of US$33,500, representing final payment under the Project B Contract after deduction of US$10,000 for damaged items. On 8 December 1990, the parties executed a document entitled "Protocol" that discussed the outstanding obligations of the parties under the Project B Contract. In that document, the Employer agreed to release the Project B Contract funds in the amount of US$33,500, previously withheld pending the final delivery and installation of the furniture.

69. The Panel finds that such documentation is sufficient evidence to establish performance by Šipad and acceptance of such performance by the Employer under terms of the Project B Contract.

70. The Panel recommends compensation in the amount of US$33,500 for losses incurred on Project B.

(c) Project C Contract

71. The claim for contract losses in respect of the Project C Contract is, in actual fact, partly a claim for unpaid amounts due (US$304,244) and partly a claim for loss of profits (US$528,369). The Panel deals with the loss of profits claim separately in sub-section (d) below.

72. At the commencement of Project C, the Employer paid Šipad an advance of US$601,438 against the issue of a performance bond. Šipad alleged that progress payments of US$356,455 were not received for work completed for the months of July 1990 up to and including the first 2 weeks of November 1990. The Panel finds that the progress certificates signed by the Employer indicate that Šipad performed the work and that the Employer accepted the work performed in the total amount of US$356,455.

73. On 2 October 1990, Šipad sent a letter to the Employer stating that it had incurred costs of US$655,000 at the start of Project C, requesting payment in this amount, and requesting suspension of Project C in order to allow its employees to return home safely. On 8 December 1990, Šipad and the Employer entered into a mutual agreement to suspend work on Project C.

74. Based on the analysis of the progress payment certificates, the Panel finds that Šipad incurred costs of US$475,274 for work performed and retention money withheld on Project C. The Panel is, however, not persuaded that Šipad incurred start up costs of US$655,000. The only evidence of costs in that amount is Šipad's statement in its letter of 2 October 1990 to the Employer.

75. Because Šipad received an advance payment that exceeded its costs on Project C, the Panel recommends no compensation for Project C losses.

(d) Loss of profits

76. Šipad seeks compensation in the amount of US$528,369 in respect of loss of profits on the Project C Contract.

77. Governing Council decision 9, paragraph 9, provides that where "continuation of the contract became impossible for the other party as a result of Iraq's invasion and occupation of Kuwait, Iraq is liable for any direct loss the other party suffered as a result, including lost profits".

78. The effects of the language of decision 9 on claimants seeking compensation for loss of profits are threefold. First, the phrase "continuation of the contract" imposes a requirement on the claimant to prove that it had an existing contractual relationship at the time of the invasion. Second, the provision requires the claimant to prove that the continuation of the relationship was rendered impossible by Iraq's invasion and occupation of Kuwait. This provision indicates a further requirement that profits should be measured over the life of the contract. The importance of this requirement is that the claimant must demonstrate that there was a very high probability that the contract would have been profitable as a whole. It is not sufficient to prove a profit at any stage before the completion of the Project. Thus, a claimant must demonstrate that it would have been profitable to complete the contract.

79. Paragraph 5 of Governing Council decision 15 (S/AC.26/1992/15) expressly states that a claimant seeking compensation for business losses such as loss of profits, must provide "detailed factual descriptions of the circumstances of the claimed loss, damage or injury" in order for compensation to be awarded. Accordingly, the Panel requires sufficient evidence of ongoing profitability.

80. The Panel finds that only the work performed pursuant to Project C was ongoing on 2 August 1990. In support of this alleged loss, Šipad offered a calculation that shows a loss of profits of 12 per cent of the value of the work not completed due to the suspension of the Project. However, Šipad did not provide any evidence to demonstrate that the Project would have been profitable as a whole. There is no evidence before the Panel regarding Šipad's recovery of profits on other similar projects.

81. Accordingly, the Panel recommends no compensation for loss of profits.

3. Recommendation for contract losses

82. Based on the above, the Panel recommends compensation in the amount of US$33,500 for contract losses.

B. Loss of tangible property

83. Šipad seeks compensation in the amount of US$1,195,797 for loss of tangible property, including US$295,792 for loss of tools, vehicles, equipment and machinery and US$900,005 for materials left at the Project site.

1. Facts and contentions

84. In respect of the lost tools, vehicles, equipment and machinery valued at US$295,792, Šipad provided evidence (in the form of invoices and certificates of origin showing Iraqi customs stamps) that these were imported into Iraq between 20 December 1988 and 22 February 1989. The customs documents indicate the stated value of each item.

85. Šipad alleged that, at the time of suspension of Projects A, B, and C, it left materials at the Project sites with a value of US$900,005. Šipad provided a list of these items together with its estimate of their value. In contrast to the evidence submitted for tools, vehicles, equipment and machinery, Šipad provided no invoices or other proof of ownership or evidence of the whereabouts of these materials at the time of their alleged loss.

2. Analysis and valuation

86. The Panel finds that the documents submitted by Šipad demonstrate that the tools, vehicles, equipment and machinery were owned by Šipad and present in Iraq as of February 1989. The projects for which these tangible assets were used were ongoing on 2 August 1990. Šipad provided evidence that the tangible assets were present at the project sites as of 2 August 1990. While Šipad used the cost stated on the customs documents as the stated value of the loss of these items, it failed to deduct any depreciation over the two year period prior to the completion of the Projects. Applying appropriate depreciation, the Panel finds that the value of the lost items is US$147,896.

87. With respect to the materials allegedly left on site at the suspension of the Projects, the Panel finds that Šipad did not provide sufficient evidence of (a) its ownership of the materials, (b) the cost of the materials, or (c) these materials being in Iraq on 2 August 1990. Accordingly, the Panel does not recommend compensation for these items.

3. Recommendation for loss of tangible property

88. Based on the above, the Panel recommends compensation in the amount of US$147,896 for loss of tangible property.

C. Payment or relief to others

1. Facts and contentions

89. Šipad seeks compensation in the amount of US$88,998 for costs incurred in evacuating 69 people (workers and their families) from Iraq to their home countries. Šipad listed the names of the evacuees, their respective current addresses, passport numbers, dates of departure, routes taken and costs of the evacuation. Šipad also provided copies of the passports of the evacuees showing Iraqi entry and exit visas and stated their dates of departure as between 22 August 1990 to 22 November 1990. There were two routes taken: one from Jordan by air and another via Turkey by bus.

90. The claim is for bus fares, air fares, accommodation and daily travel allowances paid to the evacuees. Šipad provided air tickets in support of this alleged loss.

2. Analysis and valuation

91. Šipad has established that it evacuated 69 people between 20 August and 21 December 1990 by bus and air transport. Šipad acknowledged that the normal cost of repatriating 69 persons would be US$45,145. Because the Project was nearly completed, the Panel finds that the cost of US$75,861 for the 69 evacuees must be reduced by the normal cost of US$45,145 of repatriation, for a total of US$30,716.

3. Recommendation for payment or relief to others

92. The Panel recommends compensation in the amount of US$30,716 for payment or relief to others.

D. Unproductive labour

93. Šipad seeks compensation in the amount of US$197,640 for what it describes as "floating time expenses". The alleged loss is for unproductive labour costs resulting from the payment by Šipad of the salaries of 69 employees during the first three months after their return home from Iraq. The amounts claimed were calculated on the basis of the average domestic monthly salary under applicable law in 1990, making allowance for social security contributions.

94. While Šipad stated that local applicable law required it to pay its repatriated employees three months' salary, Šipad submitted no evidence to prove the existence of the applicable law or the fact of payment.

95. The Panel recommends no compensation for unproductive labour.

E. Head and branch office expenses

96. Šipad seeks compensation in the amount of US$538,735 for head office expenses in Sarajevo and branch office expenses in Baghdad. Both items were calculated at a percentage of the contract value for Project Contract C: 7 per cent in the case of head office expenses and 3.5 per cent in the case of branch office expenses.

97. The Panel finds that it is normal commercial practice to include head office and branch office expenses in the contract price. These expenses are also more appropriately considered as business expenses that are not normally charged as a line item cost on a project.

98. The Panel therefore recommends no compensation for head office or branch office expenses.

F. Summary of recommended compensation for Šipad

99. Based on its findings regarding Šipad's claim, the Panel recommends compensation in the amount of US$212,112. The Panel finds the date of loss to be 31 December 1990.

IV. THE CLAIM OF BIMONT D.D. RIJEKA

100. Bimont d.d. Rijeka ("Bimont") is a Croatian corporation that was involved in the manufacture and supply of equipment for, and the construction of, water towers for the Hilla and Mosul Water Supply Scheme in Iraq (the "Projects"). Bimont seeks compensation for unpaid contractual amounts including interest, loss of expected profits, loss of tangible property and loss of Iraqi dinars left in Iraq in the total amount of US$271,180.

101. Bimont agreed with Kovinotehna, a Slovenian company, (acting as export agent on behalf of Bimont), and AB Electro-Invest ("ABE"), a Swedish company, to act as a sub-contractor to an Indian construction company for the supply and erection of two water towers. A contract, dated 29 May 1986, between Kovinotehna and ABE set forth the terms of performance for Bimont to supply equipment to ABE for use on the Project (the "Contract"). The total contract price was US$2,063,880, but was reduced to US$1,883,250 under an amendment to the Contract executed by the parties on 19 February 1987. The revised Contract stated separate prices for materials (US$1,449,050) and erection of the towers (US$384,200). Bimont stated that the Contract was a sub-contract to the main Project contract between ABE, Som Datt Builders, India, and the Cabinet of Local Management of the State Organization for Water Supply and Sewerage System, Iraq (the "Employer") pursuant to which Som Datt Builders was required to construct water towers on the Projects.

A. Contract losses and interest

1. Facts and contentions

102. Bimont seeks compensation in the amount of US$127,481 for contract losses, including unpaid work (US$92,877), interest (US$19,504) and loss of profits (US$15,100).

103. Bimont claims interest on the unpaid contractual amounts from 1 September 1991 to 1 September 1994 at the rate of 7 per cent per annum. For the reasons stated in paragraph 37, the Panel does not address the issue of compensability of claims for interest.

104. Bimont alleged the majority of the work on the Projects had been completed by August 1990, with the exception of some work involving waterproofing to be performed by Som Datt Builders and anti-corrosive protection to be performed by Bimont. Bimont alleged it abandoned the Project and left Iraq in March 1990 with the intention of returning to complete the additional work on the Project at a later date. As a result of Iraq's invasion of Kuwait, the outstanding work by the main contractor was not completed. Thus, Bimont was prevented from completing its remaining portion of the contract. The amount claimed of US$92,877 is for the unpaid portion of work performed and invoiced by Bimont.

105. In support of its claim for unpaid work, Bimont provided copies of the Contract, the Addendum to the Contract, invoices for the supply and installation of the equipment, and bank account statements showing receipt by Kovinotehna of the amounts due under the Contract.

106. The invoices are dated from 26 December 1987 to 31 August 1988, in the case of the delivery of the equipment to the Project sites, and 7 February 1989 to 29 June 1989, in the case of the installation of the equipment.

2. Analysis and valuation

(a) Unpaid work

107. The Panel finds that the amount sought by Bimont as unpaid work is for retention money withheld pursuant to the terms of the contract. Bimont completed the contract works in March 1990. Bimont seeks compensation in the amount of US$92,877 for retention money withheld over the course of the contract.

108. Under the terms of the contract, five per cent of the total contract price was withheld as retention money. This retention money should have been paid to Bimont upon issue of the final acceptance certificate. Because of Iraq's invasion and occupation of Kuwait, neither the preliminary acceptance certificate nor the final acceptance certificate was issued. Accordingly, the Panel finds that the claim for retention money is compensable in the amount of US$92,877.

(b) Loss of profits

109. Bimont seeks compensation in the amount of US$15,100 for loss of profits, based on its calculation of 15 per cent of the price of installation of the equipment. However, Bimont did not provide the Panel with details or evidence of the contract's profitability as a whole to support this allegation.

110. Governing Council decision 9, paragraph 9, provides that where "continuation of the contract became impossible for the other party as a result of Iraq's invasion and occupation of Kuwait, Iraq is liable for any direct loss the other party suffered as a result, including lost profits".

111. As previously stated in paragraphs 77-79, supra, the Panel requires that a claimant provide sufficient evidence of the ongoing profitability of an existing contract at the time of Iraq's invasion and occupation of Kuwait in order to recover compensation for loss of profits.

112. The Panel finds that Bimont was paid on a work performed basis, but was unable to verify the basis of the alleged profit margin from the

documents and information provided. Accordingly, the Panel recommends no compensation for loss of profits.

3. Recommendation for contract losses

113. The Panel recommends compensation in the amount of US$92,877 for contract losses. The Panel is aware that Som Datt Builders has filed a claim for compensation with the Commission. Insofar as the Panel has recommended that Bimont's claim for the retention money be paid, Som Datt Builders' claim will be recommended for rejection.

B. Loss of tangible property

1. Facts and contentions

114. Bimont seeks compensation in the amount of US$137,248 for loss of equipment, vehicles and machinery that it allegedly left at the Hilla Project site in August 1990 under the guard of Som Datt Builders.

2. Analysis and valuation

115. Bimont did not provide the Panel with any evidence of ownership, acquisition cost or importation of the equipment or machinery allegedly left on the Project site. Further, Bimont did not state what happened to the equipment and machinery or whether it has been able to effect any recovery since the time of the alleged loss.

116. Bimont increased its alleged loss by adding an invoice in the amount of US$57,904 for three Toyota Land Cruisers. A response to an inquiry for additional evidence is not an opportunity for a claimant to increase the quantum of a claim previously submitted. This increase was not accepted by the Panel, as the Panel reviews only the claim as initially presented.

117. The only evidence provided in support of this loss element is a list compiled by Bimont dated 20 May 1992 setting out the assets that are the subject of its claim together with their asserted value. The Panel finds that there is insufficient evidence that Bimont was the owner of the relevant assets or that they were located at the Project in Iraq at the time of their alleged loss. Indeed, it is to be noted that Bimont made no attempt at all to support this part of its claim with evidence.

3. Recommendation for loss of tangible property

118. The Panel recommends no compensation for loss of tangible property.

C. Loss of Iraqi dinars

119. Bimont claims US$6,451 (original currency ID 2,010) for loss of Iraqi dinars. Bimont stated that on 4 March 1990, during the temporary abandonment, it deposited ID 2,010 in the safe of Som Datt Builders in Iraq.

120. In support of its claim for loss of Iraqi dinars, Bimont provided what appear to be petty cash records dated from July 1987 to September 1989. It also provided a copy of a letter dated 4 March 1990 from Som Datt Builders, acknowledging receipt of ID 2,010 from Bimont.

121. The Panel finds that the account records submitted by Bimont indicate that it was being paid under the Contract as the Contract work progressed. The account shows the amount due at 19 April 1990 to Bimont from Som Datt Builders was ID 69,981. In fact, Bimont was paid ID 74,930. The account further shows that the ID 2,010 received by Som Datt Builders was treated as a repayment by Bimont of an overpayment to Bimont by Som Datt Builders.

122. The Panel recommends no compensation for the loss of Iraqi dinars.

D. Summary of recommended compensation for Bimont

123. Based on its findings regarding Bimont's claim, the Panel recommends compensation in the amount of US$92,877. The Panel finds the date of loss to be 31 August 1991.

V. THE CLAIM OF YIT CORPORATION

124. YIT Corporation ("YIT"), a Finnish public limited liability company, was engaged as a contractor by the Ministry of Public Works of Kuwait to work on the construction of the Amiri Diwan Project in Kuwait City (the "Project"). YIT seeks compensation in the amount of US$2,399,593 for contract losses, loss of tangible assets, demobilization costs, payment or relief to others, financing costs and loss of overheads and profits.

A. Contract losses

1. Facts and contentions

125. The work on the Project was carried out pursuant to Contract C/42, Amiri Diwan Project, Building 'N', entered into between YIT and the Ministry of Public Works on 4 September 1989 (the "Contract"). The total value of the Contract was US$11,778,547. YIT alleged that the Project was 60 per cent complete on 2 August 1990.

126. YIT stated that, following the liberation of Kuwait, it attempted to negotiate with the Ministry of Public Works with a view to recommencing the Project. However, its attempts were unsuccessful and, on 9 February 1992, the Ministry of Public Works informed YIT by letter that it considered the contract terminated in accordance with the Minister's decision 148(19/91) dated 27 January 1991.

127. The Finnish Export Guarantee Board had provided YIT with credit risk guarantee cover equal to 90 per cent of the total value of the Contract. In September 1991 and again in February and June 1994, YIT filed claims with the Finnish Export Guarantee Board for a total amount of US$474,154. YIT provided a copy of the compensation decision of the Finnish Export Guarantee Board dated 23 June 1994. The following information can be ascertained from Finnish Export Guarantee Board's compensation decision:

(a) Under the relevant credit risk guarantee policy, YIT was entitled to receive 90 per cent of the total amount awarded by the Finnish Export Guarantee Board (i.e., US$461,413);

(b) The Finnish Export Guarantee Board made an award of compensation in YIT's favour in the amount of US$512,681 in three separate decisions dated 13 June 1991, 17 January and 21 April 1994;

(c) On 19 June 1991, the Finnish Export Guarantee Board paid YIT the amount of US$1,034,450;

(d) Under the compensation decision, YIT was required to repay the Finnish Export Guarantee Board the amount of US$686,995, being the excess payment of compensation as well as an additional amount relating to recovery expenses, together with interest at 10 per cent per annum from 23 June 1994 until payment.

128. YIT seeks compensation in the amount of US$445,028 for contract losses, including lost or damaged materials at site, lost advance payments, mobilization costs, planning, procurement and submittal costs, guarantee fees and demobilization costs.

2. Analysis and valuation

(a) Lost or damaged materials at site

129. YIT withdrew its claim for this loss element during the proceedings, as the amount originally claimed was compensated by the Finnish Export Guarantee Board on 27 June 1994.

(b) Lost advance payments

130. YIT seeks compensation in the amount of US$13,211 for lost advance payments made in June and July 1990 to two Kuwaiti suppliers of materials. YIT alleged that the materials ordered from the Kuwaiti suppliers could not be delivered as a result of Iraq's invasion and occupation of Kuwait. YIT revised and reduced the amount of its original claim after it received a partial refund from one of the suppliers.

131. In support of its claim for lost advance payments, YIT provided copies of two orders dated June and July 1990 requiring advance payment by YIT of the amounts due. YIT also provided cheque payment vouchers showing payments made by YIT on 13 June and 8 July 1990.

132. YIT did not explain the direct link between its inability to recover the advance payments and Iraq's invasion and occupation of Kuwait. YIT provided no evidence that the Kuwaiti suppliers were rendered insolvent as a consequence of the invasion and occupation. Accordingly, the Panel finds that YIT failed to establish the causal link between its stated losses and Iraq's invasion and occupation of Kuwait.

133. The Panel recommends no compensation for lost advance payments.

(c) Mobilization costs

134. YIT seeks compensation in the amount of US$96,850 for unrecovered mobilization costs incurred by YIT between the time the Project was mobilized in August 1989, and 30 November 1989. The costs include salaries, travel between Helsinki and Kuwait, labour, temporary works, insurance premiums paid in Kuwait for which YIT received no payment under the relevant policies and other miscellaneous costs. YIT seeks compensation for 40 per cent of the costs incurred. According to YIT, this represents the portion of the uncompleted Contract.

135. YIT claims for the balance between the losses allegedly incurred by it and the amount of compensation awarded by the Finnish Export Guarantee Board in its decision of 23 June 1994 (i.e. US$81,367), 90 per cent of which was paid to YIT.

136. In support of its claim for unrecovered mobilization costs, YIT provided a summary of "not repaid mobilization costs", which lists the relevant amounts claimed, and receipts and invoices for some, but not all, of those costs. However, the receipts were predominately in Finnish with no English translations. Further, it is not clear what items they relate to, as YIT provided no explanations or cross-references which would link them to the summary of "not repaid mobilization costs".

137. The Panel finds that YIT provided insufficient evidence of its stated losses. The Panel recommends no compensation for mobilization costs.

(d) Planning, procurement and submittal costs

138. YIT seeks compensation in the amount of US$257,541 for unamortised expenses in respect of head office overheads, staff salaries and accommodation incurred during the tender period (between the dates 1 April to 30 June 1989) and during the construction period (between the dates 1 September 1989 to 30 August 1990) of the Project.

139. YIT alleged that it would have recovered those costs over the lifetime of the Contract and calculated its loss as 40.1 per cent of its total expenditure on the Project.

140. In support of its claim for planning, procurement and submittal costs, YIT provided a summary listing of the relevant costs and head office technical overheads allegedly incurred by it during the tender period and during the construction period.

141. YIT stated that it has no evidence in support of its claim, as it destroyed the relevant documentation after the five year minimum document retention period required by Finnish law.

142. The Panel finds that YIT provided insufficient evidence of its stated losses. The Panel recommends no compensation for planning, procurement and submittal costs.

(e) Guarantee fees paid

143. YIT seeks compensation in the amount of US$32,475 for guarantee fees. The relevant guarantees were issued in respect of the Project. They included an advance payment guarantee, a performance guarantee and a supply of labour guarantee issued for works under the Contract, and three guarantees issued by the Finnish Export Guarantee Corporation.

(i) Advance payment guarantee

144. The advance payment guarantee in the amount of US$1,177,855 was issued by the Commercial Bank of Kuwait on 7 September 1989. Its expiry date was 7 May 1991. YIT seeks compensation in the amount of US$1,379 for fees paid for the advance payment guarantee between 2 August 1990 and 7 May 1991.

145. YIT was required to take out the advance payment guarantee pursuant to clause 60(4) of the Conditions of Contract upon payment of the advance payment equal to 10 per cent of the total Contract value.

146. In support of its claim for fees paid in respect of the advance payment guarantee, YIT provided a copy of the advance payment guarantee. YIT also provided a copy of a letter dated 21 June 1990 in which the Ministry of Public Works requested the Commercial Bank of Kuwait to reduce the amount of the guarantee to US$721,730.

147. The Panel finds that YIT provided sufficient evidence that the Project was ongoing as of 2 August 1990. The advance payment guarantee was required under the Conditions of Contract. The Panel, therefore, finds that the loss was a direct result of Iraq's invasion and occupation of Kuwait. YIT provided evidence that the advance payment guarantee was outstanding as of 2 August 1990.

148. The Panel recommends compensation in the amount of US$1,379 for fees paid in respect of the advance payment guarantee.

(ii) Performance guarantee

149. The performance guarantee in the amount of US$1,177,855 was issued by the Commercial Bank of Kuwait. Its expiry date was 2 June 1991. YIT seeks compensation in the amount of US$2,461 for fees paid for the performance guarantee between 2 August 1990 and 2 June 1991.

150. YIT was required to take out the performance guarantee pursuant to clause 10 of the General Conditions of the Contract.

151. In support of its claim for fees paid for the performance guarantee, YIT provided a copy of a letter dated 21 September 1989 from the Commercial Bank of Kuwait to YIT confirming that the expiry date of the performance guarantee was 2 June 1991.

152. The Panel finds that YIT provided sufficient evidence that the Project was ongoing as of 2 August 1990. The performance guarantee was required under the General Conditions of the Contract. The Panel, therefore, finds that the loss was a direct result of Iraq's invasion and

occupation of Kuwait. YIT provided evidence that the performance guarantee was outstanding as of 2 August 1990.

153. The Panel recommends compensation in the amount of US$2,461 for fees paid in respect of the performance guarantee.

(iii) Supply of labour guarantee

154. The supply of labour guarantee in the amount of US$216,263 was issued by the Commercial Bank of Kuwait. Its expiry date was 17 September 1991. YIT seeks compensation in the amount of US$518 for fees paid between 2 August 1990 and 17 September 1991.

155. YIT was required to take out the supply of labour guarantee pursuant to clause 24 of the General Conditions of the Contract, which provides for insurance against accidents to workers.

156. In support of its claim for fees paid for the supply of labour guarantee, YIT provided ledgers and bank vouchers, which were mostly in the Finnish language with no English translations. YIT did not provide a copy of the supply of labour guarantee.

157. The Panel finds that YIT provided sufficient evidence that the Project was ongoing as of 2 August 1990. The supply of labour guarantee was required under the General Conditions of the Contract. However, YIT did not provide sufficient evidence of its losses.

158. The Panel recommends no compensation for fees paid in respect of the supply of labour guarantee.

(iv) Guarantees issued by the Finnish Export Guarantee Board

159. YIT seeks compensation in the amount of US$28,117 for fees paid to obtain three guarantees issued by the Finnish Export Guarantee Board. Under the credit risk guarantee cover provided by the Finnish Export Guarantee Board, the Finnish Export Guarantee Board issued guarantees indemnifying YIT against non-payment of the amounts due under the Contract. YIT stated that to obtain the relevant credit risk guarantee cover, it was "obliged to pay the rest of the guarantee fees if the right to compensation arises".

160. In support of its claim for this loss item, YIT provided copies of payment vouchers showing payments made to the Finnish Export Guarantee Board for the periods March to September 1990, September 1990 to March 1991 and March 1991 to September 1991. YIT did not provide copies of the guarantees.

161. The Panel finds that YIT failed to establish the direct link between its stated loss and Iraq's invasion and occupation of Kuwait. The guarantee fees were akin to insurance premiums paid under the credit risk guarantee cover. The Panel finds that the guarantee fees were amounts that a contractor would ordinarily expect to lose whether or not recompense was received under the relevant insurance cover. YIT filed claims for, and was paid, substantial amounts of compensation under the credit risk guarantee cover provided by the Finnish Export Guarantee Board. Therefore, the Panel finds that these fees are not properly described as a loss and, in any event, were not incurred as a direct result of Iraq's invasion and occupation of Kuwait.

162. The Panel recommends no compensation for fees paid to obtain the guarantees issued by the Finnish Export Guarantee Board.

(f) Demobilization costs

163. YIT seeks compensation in the amount of US$44,951 for expenses allegedly incurred by YIT as a result of demobilizing staff after Iraq's invasion of Kuwait. The expenses include staff salaries, hotel expenses, travel expenses, airfares, freight and other miscellaneous charges. YIT stated that its claim also includes costs incurred in negotiating with the Ministry of Public Works in an attempt to recommence the Contract after work was suspended. It also includes its attempts to reach a settlement with the Ministry of Public Works for amounts owed to it after it became clear that it would not be possible to recommence the Project.

164. The Finnish Export Guarantee Board made a partial award of the amounts claimed by YIT. The amount awarded was US$67,220, 90 per cent of which was paid to YIT, i.e., US$60,498. The Finnish Export Guarantee Board in its compensation decision of 23 June 1994 stated that it rejected part of YIT's claim for demobilization losses since "they are not costs which could have been covered by ordinary forms of insurance". In addition, it found that the project manager's travel expenses could not be considered as demobilization costs under the insurance policy. Under the relevant insurance policy, YIT was precluded from obtaining any further amounts in respect of demobilization costs due to applicable maximum levels of cover.

165. In support of its claim for this loss item, YIT provided a summary of demobilization costs, which lists the expenses and contains a brief description of the nature of the expenses. YIT also provided copies of what appear to be receipts for the majority of the items claimed for. YIT further provided a certificate dated 13 December 1991 from its auditors approving the summary of demobilization costs.

166. The Panel finds that on the evidence provided, the amounts claimed in respect of demobilizing the Project were incurred as a direct result of

Iraq's invasion and occupation of Kuwait. The Panel finds that YIT provided sufficient evidence of its losses.

167. The Panel recommends compensation in the amount of US$44,951 for demobilization costs.

3. Recommendation for contract losses

168. The Panel recommends compensation in the amount of US$48,791 for contract losses.

B. Loss of tangible property

1. Facts and contentions

169. YIT seeks compensation in the amount of US$224,008 for loss of tangible property. The claim is for construction machinery, office furniture, equipment and consumer products that YIT allegedly left behind at the Project site after Iraq's invasion of Kuwait.

170. YIT stated that when YIT's representatives returned to the Project site in the first half of 1991, they found that the construction machinery and equipment were no longer there. The site barracks and office furniture had been either badly destroyed or stolen. Workshop tools had been stolen.

2. Analysis and valuation

171. In support of its claim for this loss item, YIT provided a summary of lost fixed assets listing the relevant assets. YIT also provided a fixed assets report, which contains four separate lists of equipment, their respective alleged values and dates of purchase. YIT also provided invoices and cheque payment vouchers showing that the assets in question were purchased in Kuwait at the end of 1989 and in the first half of 1990.

172. The Finnish Export Guarantee Board made an award of US$205,529 for lost fixed assets, 90 per cent of which was paid to YIT. However, the compensation decision of 23 June 1994 does not contain details of the assets that were included in the award of compensation under the credit risk guarantee policy. YIT did not provide any explanation concerning this.

173. The Panel finds that YIT did not provide sufficient evidence that the assets in respect of which it seeks compensation have not already been compensated by the Finnish Export Guarantee Board.

3. Recommendation for loss of tangible property

174. The Panel recommends no compensation for loss of tangible property.

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C. Payment or relief to others

1. Facts and contentions

175. YIT seeks compensation in the amount of US$400,451 for payment or relief to others. YIT deducted from its claim for this loss item the amount of US$1,443 for some items of furniture that were sold in Kuwait. The claim is for costs incurred in respect of five employees of YIT who were working on the Project at the time of Iraq's invasion of Kuwait. YIT stated that those employees stayed in Kuwait for some time before being given documents by the Iraqi authorities authorizing them to depart to Turkey via Iraq. They then commenced their journey to the Iraqi/Turkish border and, after two weeks at the border, the employees' wives were permitted to leave Iraq to travel to Turkey. However, YIT's employees were taken to Baghdad and detained as hostages. They were released in November 1990.

2. Analysis and valuation

176. In support of its claim for payment or relief to others, YIT provided a document entitled "summary of payment and relief to others". This document lists expenses incurred between 10 August 1990 and 31 March 1991. YIT also provided copies of receipts, invoices and payment vouchers in support of the majority of items listed in the summary. YIT also provided a statement dated 16 September 1998 by YIT's Senior Vice President, International Operations, concerning the circumstances of the evacuation.

177. The summary of expenses incurred provided by YIT divides this loss item into the sub-categories: costs of rescue operations in Finland (attempts to secure the release of the hostages), hostage expenses, travel expenses of members of the Finnish Parliament to Iraq, consulting and travel costs of the chairman of the Finnish-Arabic society, and hostage salaries.

(a) Costs of rescue operations in Finland

178. YIT seeks compensation in the amount of US$14,325 for costs incurred at its head office in Finland in attempting to secure the release of the hostages.

179. YIT states that while the hostages were being detained in Iraq and Kuwait, the Project Manager, (who happened to be visiting Finland at the time of Iraq's invasion of Kuwait), was trying to arrange help for them via the Finnish Government and other official sources.

180. The amounts claimed are identified by entries in the "summary of payment and relief to others" document provided by YIT. The majority of

items are also supported by copies of receipts, invoices and payment vouchers.

181. The statement by YIT's Senior Vice President, International Operations, supports YIT's assertion that its staff at the head office in Finland made concerted efforts to secure the release of the hostages.

182. The Panel finds that the amounts claimed are directly related to Iraq's invasion and occupation of Kuwait. The Panel finds that YIT provided evidence that it incurred most of the expenses claimed for. However, there are some claimed amounts that are not supported by primary evidence. Accordingly, the Panel recommends a reduced award of 80 per cent of the amount of the claim.

183. The Panel recommends compensation in the amount of US$11,460 for the costs of its rescue operations in Finland.

(b) Hostage expenses

184. YIT seeks compensation in the amount of US$98,590 for hostage expenses, including cash advances (US$12,829), hostage care (US$21,237), travel expenses (US$6,984) and compensation for lost personal belongings (US$57,540).

185. The amounts claimed are identified by entries in the "summary of payment and relief to others" document provided by YIT. The majority of items are also supported by copies of receipts, invoices and payment vouchers. However, the Panel was unable to identify any items described as "lost personal belongings" in the receipts, invoices and payment vouchers provided by YIT. The receipts, invoices and payment vouchers were presented in such a way as to make the task of finding any cross-references relating to lost personal belongings impossible for the Panel.

186. YIT provided no explanations concerning the item described as "lost personal belongings".

187. The Panel finds that the amounts claimed are directly related to Iraq's invasion and occupation of Kuwait. The Panel finds that, with the exception of the item described as "lost personal belongings", YIT provided sufficient evidence of the claimed expenses.

188. The Panel recommends compensation in the full amount in respect of YIT's claim for cash advances and hostage care. The Panel recommends no compensation for lost personal belongings. The Panel recommends an adjustment to YIT's claim for travel expenses to take account of the normal travel costs that YIT would have incurred but for Iraq's invasion and occupation of Kuwait.

189. The Panel recommends compensation in the amount of US$38,954 for hostage expenses.

(c) Travel expenses of members of the Finnish Parliament

190. YIT seeks compensation in the amount of US$20,532 for the travel expenses of members of the Finnish Parliament who travelled to Iraq in an attempt to secure the release of YIT's employees who were being held hostage.

191. In support of this loss item, YIT provided a statement by YIT's Senior Vice President, International Operations, describing the parliamentarians' trips to Iraq. According to this statement, the members of the Finnish Parliament travelled to Iraq to try to secure the release of a number of Finnish hostages, including employees of other Finnish companies who were working on projects in Iraq and Kuwait at the time of Iraq's invasion of Kuwait.

192. The amounts claimed are identified by entries in the "summary of payment and relief to others" document provided by YIT. However, the Panel was unable to cross-reference the entries in the summary to the relevant receipts, invoices and payment vouchers provided by YIT. The receipts, invoices and payment vouchers were presented in such a way as to make this task impossible for the Panel.

193. The Panel finds that YIT did not adequately explain the direct link between its stated losses and Iraq's invasion and occupation of Kuwait. Further, YIT did not provide sufficient evidence of its losses. Accordingly, the Panel recommends no compensation for the travel expenses of members of the Finnish Parliament who travelled to Iraq.

(d) Consulting costs of the chairman of the Finnish-Arabic Society

194. YIT seeks compensation in the amount of US$47,708 in respect of consulting costs of the chairman of the Finnish-Arabic Society. YIT stated that it engaged the services of the Finnish-Arabic Society in an attempt to facilitate the release of the hostages.

195. The amounts claimed are identified by entries in the summary of payment and relief to others provided by YIT. However, YIT provided no evidence (such as receipts, invoices or payment vouchers) that it incurred the amounts claimed.

196. The Panel finds that YIT did not adequately explain the direct link between its stated losses and Iraq's invasion and occupation of Kuwait. Further, YIT did not provide sufficient evidence of its losses. Accordingly, the Panel recommends no compensation for the consulting costs of the chairman of the Finnish-Arabic Society.

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(e) Hostage salaries

197. YIT seeks compensation in the amount of US$81,602 for the salary costs (including Finnish social costs) of its five employees who were held hostage for the period of their detention. It is, in effect, a claim for lost productivity of YIT's employees. Although YIT paid the salaries of its employees, it did not receive any benefit from them during the period of their detention.

198. In support of its claim for hostage salaries, YIT provided copies of its employee salary ledgers for the relevant employees. YIT also provided evidence from an independent source in Finland of the social costs applicable to the construction industry at the relevant time.

199. The Panel finds that the amounts claimed are directly related to Iraq's invasion and occupation of Kuwait. The Panel finds that YIT provided sufficient evidence of the salary expenses. The Panel is satisfied that YIT did not receive any benefit from the employees during the relevant period.

200. The Panel recommends compensation in the amount of US$81,602 for hostage salaries.

(f) Salary costs of YIT's area manager

201. YIT seeks compensation in the amount of US$139,137 in respect of the salary costs of its area manager for one year.

202. YIT stated that the area manager was involved in coordinating the rescue operations of the hostages. After the release of the hostages, the area manager attempted to negotiate a recommencement of the Project with the Ministry of Public Works. He then spent most of 1991 and 1992 in Kuwait trying to obtain payment from the Ministry of Public Works of the amounts outstanding under the Contract. The area manager was also involved in preparing claims for compensation to be filed with the Finnish Export Guarantee Board and the Commission.

203. In support of its claim for salary costs, YIT provided a detailed calculation of the area manager's salary costs at the relevant time.

204. The Panel makes no recommendation with respect to the portion of the area manager's salary relating to the preparation of YIT's claim with the Commission, as the compensability of claim preparation costs will be decided upon separately by the Governing Council.

205. The Panel finds that YIT failed to explain the direct link between its stated loss and Iraq's invasion and occupation of Kuwait. The explanations provided by YIT indicate that the area manager was a salaried

employee included in YIT's head office structure. The Panel finds that YIT would have incurred the salary costs of the area manager even if Iraq's invasion and occupation of Kuwait had not occurred.

206. The Panel recommends no compensation for the salary costs of its area manager.

3. Recommendation for payment or relief to others

207. The Panel recommends compensation in the amount of US$132,016 for payment or relief to others.

D. Financing costs

1. Facts and contentions

208. YIT seeks compensation in the amount of US$467,349 in respect of financing costs, including the inability to use funds that were frozen in three bank accounts in Kuwait (US$156,323), interest on the delayed payment under Contractor's Payment Certificate No. 9 (US$283,254) and lost petty cash (US$27,772).

209. YIT claims the additional amount of US$23,702 for interest from 30 November 1993 to 23 September 1996. For the reasons stated in paragraph 37, the Panel does not address the issue of compensability of claims for interest.

2. Analysis and valuation

(a) Frozen bank accounts in Kuwait

210. YIT seeks compensation in the amount of US$156,323 in respect of its inability to use funds that were frozen in three bank accounts in Kuwait. The claim is for interest allegedly lost as a result of YIT's funds being frozen in Kuwait during Iraq's occupation.

211. YIT alleged that it could have achieved the rate of 12 per cent per annum on its funds had it deposited the funds with banks in Finland during the relevant period. The rate of 12 per cent per annum was substantially higher than the rates applicable to its bank accounts in Kuwait.

212. In support of its claim for loss of interest on funds frozen in Kuwait, YIT provided copies of bank statements issued by the Commercial Bank of Kuwait showing YIT's bank balances as of 2 August 1990.

213. The Panel finds that YIT did not demonstrate the direct link between its stated loss and Iraq's invasion and occupation of Kuwait. The decision to deposit funds in banks located in particular countries is a commercial

decision, which a corporation engaged in international operations is required to make. In making this decision, a corporation would normally take into account the relevant country or regional risks involved. The Panel finds that the causal link in respect of this loss item, (which is essentially a claim for a potential increase in interest earnings), is not direct. Accordingly, the amount claimed by YIT is not compensable under Security Council resolution 687 (1991).

214. The Panel recommends no compensation for YIT's inability to use funds that were frozen in its bank accounts in Kuwait.

(b) Delay of Contractor's Payment Certificate No. 9

215. YIT seeks compensation in the amount of US$283,254 for loss of interest at the rate of 12 per cent per annum as a consequence of the delayed payment of Contractor's Payment Certificate No. 9 (the "Certificate").

216. The Certificate relates to work completed by YIT in July 1990. It was first issued by YIT on 1 August 1990. The amounts included in the Certificate (US$7,374,130) were due for payment by the Ministry of Public Works on 30 August 1990.

217. YIT stated that it submitted the Certificate to the Ministry of Public Works for the fourth time on 15 October 1991. On 27 October 1991, the Ministry of Public Works agreed to pay the amounts included in the Certificate. The Ministry of Public Works paid part of the amount due in May and July 1992 and the balance on 9 February 1994.

218. In support of its claim for loss of interest due to the delayed payment of the Certificate, YIT provided a copy of a revised Certificate dated 2 May 1992. YIT did not provide a copy of the original Certificate.

219. The Panel finds that YIT failed to demonstrate that the delay on the part of the Ministry of Public Works in paying the amount due under the Certificate was a direct result of Iraq's invasion and occupation of Kuwait. Accordingly, the Panel recommends no compensation for this loss item.

(c) Lost petty cash

220. YIT seeks compensation in the amount of US$27,772 for petty cash that was allegedly lost as a result of Iraq's invasion of Kuwait. YIT did not explain how the amount was lost.

221. In support of its claim for lost petty cash, YIT provided a handwritten document showing movements of petty cash for the month of July 1990 and a cash balance of the claimed amount as at 1 August 1990. The source

of this document is unclear. The document makes reference to a "daily journal", which allegedly contains details of the transactions for July 1990. However, YIT did not provide a copy of the daily journal.

222. The Panel finds it likely that a working cash balance would have been available for the Project. The Panel finds that YIT did not provide sufficient evidence that the amount of petty cash existed at the Project site. The document provided by YIT is insufficient evidence of this.

223. The Panel recommends no compensation for lost petty cash.

3. Recommendation for financing costs

224. The Panel recommends no compensation for financing costs.

E. Lost head office overheads and profits

225. YIT seeks compensation in the amount of US$839,055 for lost head office overheads and profits on the value of the unexecuted Contract works. YIT calculated the claimed amount by applying a margin of between 4 and 15 per cent in respect of lost profits and head office overheads to the unfinished portion of the civil works, mechanical works and electrical works.

226. In support of its claim for lost head office overheads and profits, YIT provided a copy of the price analysis for the Project prepared by YIT. The price analysis, (which forms part of the Contract), contains the estimated percentages for YIT's head office overheads and profits for the Project. YIT provided no further evidence in support of the amounts claimed. YIT's corporate financial statements for the years 1987 to 1989 (inclusive) do not contain sufficient information about the quality of performance of YIT's operations in the Middle East during the relevant periods to enable the Panel to draw any conclusions about the expected profitability under the Contract.

227. The Panel finds that the price analysis alone cannot be considered as evidence of expected ongoing profitability or a measure of YIT's actual performance for its work on the Project. YIT did not provide any documentation that would verify the amounts stated in the price analysis. Accordingly, the Panel finds that YIT failed to provide sufficient evidence of expected ongoing profitability and anticipated overhead costs.

228. The Panel recommends no compensation for lost head office overheads and profits.

F. Summary of recommended compensation for YIT

229. Based on its findings regarding YIT's claim, the Panel recommends compensation in the amount of US$180,807. The Panel finds the date of loss to be 16 November 1990.

VI. THE CLAIM OF C. HAUSHAHN GMBH & CO.

230. On 30 October 1998, the Commission received from the Government of the Federal Republic of Germany a notice of withdrawal of the claim by C. Haushahn GmbH & Co. In the light of this communication, the Panel issued a procedural order on 30 November 1998, pursuant to article 42 of the Rules, acknowledging the withdrawal and terminating the Panel's proceedings with respect to the claim by C. Haushahn GmbH & Co.

VII. THE CLAIM OF EAST HUNGARIAN WATER CONSTRUCTION COMPANY

231. East Hungarian Water Construction Company ("East Hungarian Water") is a Hungarian supplier of raw and manufactured materials for use on construction projects. East Hungarian Water seeks compensation in the amount of US$3,928,536 for contract losses, loss of tangible assets, loss of income-producing property, evacuation costs and interest on a loan in connection with several construction projects in Kuwait.

232. In June 1989, East Hungarian Water, through a Hungarian entity, Hydroexport, Joint Company for Hydraulic Export Contracting ("Hydroexport"), (which appears to have been acting as East Hungarian Water's agent), entered into several contracts with a Kuwaiti customer pursuant to which it agreed to supply steel structures and to erect those structures at the project site at Ahmadi, Kuwait.

233. In addition, on 26 July 1990, Hydroexport, (presumably on behalf of East Hungarian Water, although East Hungarian Water did not state this), entered into a contract for the Ardiya Sewage Treatment Plant Project with the Ministry of Public Works of Kuwait. East Hungarian Water stated that, prior to the execution of this contract, it carried out preparatory work in connection with the tender and preparing staff to go to Kuwait to work on the project. East Hungarian Water seeks compensation in respect of this initial preparatory work.

A. Contract losses

1. Facts and contentions

234. East Hungarian Water seeks compensation in the amount of US$2,807,529 for contract losses. The relevant project contracts were entered into between Hydroexport and Kuwaiti entities in each case. Hydroexport entered into the following contracts on behalf of East Hungarian Water:

(a) Four contracts (each dated 19 June 1989) with Sa'ad Murshed General Trading and Contracting Establishment ("SAAD") relating to the first ring road and sixth ring road extension projects, pursuant to which East Hungarian Water agreed to supply and erect steel structures at the project site at Ahmadi, Kuwait (the "Ring Road Projects"). The main project contracts for the Ring Road Projects were entered into between the Ministry of Public Works of Kuwait and various contractors. SAAD was a party to a sub-contract with each of the contractors; and

(b) Contract No. SE/S/52 dated 26 July 1990, relating to the Ardiya Sewage Treatment Plant Project with the Ministry of Public Works of Kuwait.

235. East Hungarian Water provided a copy of an "Agreement on Enforcement of Claim for Compensation for War Losses in Kuwait" dated 19 October 1993, entered into between East Hungarian Water and Hydroexport, which refers to each of the project contracts. This agreement stated that Hydroexport

acted on behalf of East Hungarian Water, but that East Hungarian Water had full responsibility and liability under the contracts. The Agreement authorizes East Hungarian Water to file a claim directly with the Commission for all losses suffered under the agreement.

236. The following table summarizes the contracts that are the subject of the claim, the main contractors under each contract and the amounts claimed.

Claim of East Hungarian Water

Contract	Main contractor	Amount claimed (US$)
1. Contracts with Sa'ad Murshed dated 19 June 1989 (Ring Road Projects)		67,045
i. RA 64 (overhead sign supports)	Bess Engineering Company	
ii. RA 64 (aluminum barrier)	Bess Engineering Company	
iii. RA 157 (overhead sign supports)	United Gulf Construction Co.	
iv. RA 157 (galvanised rail)	Hyundai Engineering and Construction Co.	
2. Contract with Ministry of Public Works of Kuwait dated 26 July 1990 (Ardiya Sewage Treatment Plant Project)	Hydroexport	2,740,484
Total		2,807,529

(a) Ring Road projects

237. East Hungarian Water requests compensation for "ceased benefit" under the four Ring Road Project contracts and calculates its alleged loss at 10 per cent of the work that was not performed under the contracts. East Hungarian Water stated that work on the Ring Road Projects was 60 per cent complete at the time of Iraq's invasion. Although East Hungarian Water stated that its employees were evacuated from Kuwait at the end of August 1990, it is unclear at what point in time East Hungarian Water ceased work.

238. According to East Hungarian Water, the value of the uncompleted work was US$670,450. East Hungarian Water seeks 10 per cent of this amount, or US$67,045, as compensation for its alleged loss.

(b) Ardiya Sewage Treatment Plant project

239. East Hungarian Water calculated its alleged loss on this project at 2.5 per cent of the total contract price of US$109,619,377. As of the date of Iraq's invasion, East Hungarian Water had not performed work under the project contract, but it alleged it had incurred costs in connection with preparatory work, including negotiating and preparing the initial tender for the contract, travel expenses and staff preparations to commence work on the project. In support of its losses, East Hungarian Water submitted copies of the project contracts.

2. Analysis and valuation

240. While East Hungarian Water presented the claim as one for contract losses, it is in reality one for loss of profits.

(a) Ring Road projects

241. The Panel finds that East Hungarian Water's alleged loss relating to the contracts with SAAD (Ring Road Projects) is simply based on a statement that 60 per cent of the work was completed on all four contracts. East Hungarian Water then seeks 10 per cent of the price of the the remaining 40 per cent of the uncompleted work, or KD 19,376. However, East Hungarian Water did not provide any evidence that the contracts with SAAD were in progress at the time of Iraq's invasion, nor any evidence to demonstrate the level of work performed or work remaining. Nor was any evidence of the likely profitability of the projects provided. Also, the Panel considers it unlikely that all four contracts, which were with different main contractors, were at exactly the same stage of completion.

(b) Ardiya Sewage Treatment Plant project

242. The copies of the project contracts contain merely an outline of the contracts and do not include copies of the annexes that contain the general and technical conditions, tender documents and pricing information. East Hungarian Water failed to provide these additional documents. There is no evidence in support of the work performed by East Hungarian Water or amounts invoiced or paid under the project contracts. Furthermore, East Hungarian Water did not demonstrate on the evidence the direct link between its alleged losses and Iraq's invasion and occupation of Kuwait.

243. With respect to the contract with the Ministry of Public Works (Ardiya Sewage Treatment Plant Project), East Hungarian Water also failed to provide sufficient evidence of the ongoing profitability of the contract.

3. Recommendation for contract losses

244. The Panel recommends no compensation for contract losses.

B. Loss of tangible property

1. Facts and contentions

245. East Hungarian Water seeks compensation in the amount of US$859,536 for tangible property allegedly left behind at the Ring Road Project sites. East Hungarian Water alleged that during Iraq's invasion and occupation of Kuwait materials were removed from the Project sites where they had been left, semi-finished products were destroyed, and East Hungarian Water's offices, workshops and lodgings were ransacked and ruined.

2. Analysis and valuation

246. The tangible property claim has three loss items: (a) destruction of tools and machinery located in Kuwait; (b) loss of materials left at the site; and (c) loss of furniture and accommodation for employees. East Hungarian Water submitted considerable evidence of these alleged losses and provided a complete breakdown of its assets.

247. With respect to the tools and machinery, the Panel finds that East Hungarian Water adequately demonstrated that it owned such assets and that such assets were in Kuwait at the time of Iraq's invasion. East Hungarian Water also established to the satisfaction of the Panel the acquisition price of such assets. Many of the items were imported in 1989 and included a mixture of equipment and consumables. On this basis, the Panel finds that at least some of the consumables would have been used up at the time of Iraq's invasion. The Panel recommends compensation in the amount of US$12,000 for tools and machinery.

248. With respect to the materials left on site at the time of Iraq's invasion, the Panel considers that such materials would normally have been incorporated without delay into the permanent works. However, East Hungarian Water did not even demonstrate that such materials had arrived in Kuwait. With respect to the purchase of materials in Kuwait, East Hungarian Water did not demonstrate that these materials were delivered or paid for. The failure to produce English translations of shipping documents made it impossible for the Panel to determine whether a loss occurred and, if so, in what amount.

249. Finally, with respect to the lost furniture and employee accommodation, the Panel finds that East Hungarian Water demonstrated its ownership, the acquisition price and the presence of such furniture and accommodation in Kuwait at the time of Iraq's invasion. However, East Hungarian Water significantly over-estimated its alleged loss by failing to

account for depreciation of these items. Applying an appropriate rate of depreciation, the Panel recommends compensation in the amount of US$5,000 for loss of furniture and accommodation.

3. Recommendation for loss of tangible property

250. Based on its findings, the Panel recommends compensation in the amount of US$17,000 for loss of tangible property.

C. Payment or relief to others

251. East Hungarian Water seeks compensation in the amount of US$10,381 for costs incurred in evacuating nine of its workers from Kuwait to Hungary. East Hungarian Water stated that the workers were evacuated at the end of August 1990 by a plane chartered by the Ministry of Foreign Affairs of Hungary.

252. Based on its review of the East Hungarian Water files and the claim filed by the Government of Hungary, the Panel determined that nine of East Hungarian Water's employees were evacuated from Kuwait. The evacuation of Hungarian workers was organized by the Hungarian Embassy in Kuwait. Although East Hungarian Water alleged that it paid the Ministry of Foreign Affairs, the Panel finds no evidence of such payment in either claim file.

253. The Panel recommends no compensation for payment or relief to others.

D. Business transaction costs

254. East Hungarian Water seeks compensation in the amount of US$251,090 for "interest on credit borrowed in Hungary as a preliminary loan of export income".

255. This alleged loss is a business transaction cost. East Hungarian Water did not explain which of the projects this loan relates to, or the status of the loan on 2 August 1990. East Hungarian Water alleged that it was required to take out this loan to finance its activities after the loss of its assets and income caused by Iraq's invasion and occupation of Kuwait. The Panel finds that East Hungarian Water provided no evidence in support of its claim for interest on the loan.

256. The Panel recommends no compensation for business transaction costs.

E. Summary of recommended compensation for East Hungarian Water

257. Based on its findings regarding East Hungarian Water's claim, the Panel recommends compensation in the amount of US$17,000. The Panel finds the date of loss to be 2 August 1990.

VIII. THE CLAIM OF TOSHIBA CORPORATION

258. Toshiba Corporation ("Toshiba") is a Japanese corporation which was involved in the construction of two power station projects in Kuwait at the time of Iraq's invasion of Kuwait. The relevant projects were the Az-Zour South Power Plant and the Ahmadi/Hawalli/Wafra Substations, which were governed by separate contracts.

259. Toshiba seeks compensation in the amount of US$1,477,196 for tangible property losses and payment of relief to others.

A. Loss of tangible property

1. Facts and contentions

260. Toshiba seeks compensation in the amount of US$1,428,266 for loss of, and damage to, tangible property. Toshiba supplied extensive lists of such items including assets allegedly lost at the site office and in the employee dormitories, spare parts, tools and equipment, storage yard and warehouse, and personal assets. For all asset types except personal assets, Toshiba submitted the acquisition cost or unit price. Toshiba also submitted photographs depicting some damage to the site office.

2. Analysis and valuation

261. While Toshiba presented this claim as one for contract loss, in fact it is a claim for loss of tangible property.

262. Toshiba submitted schedules listing the quantity, unit price and total price of each of the assets that it alleged were lost. In the case of the assets allegedly lost at the site office, the relevant schedule also sets out the month of purchase of the assets. Toshiba also submitted photographs depicting the damage. The photographs demonstrate that its site office at Az-Zour was ransacked and some minor assets were damaged. Other assets were said to have been stolen.

263. In the case of the personal assets of the employees, a list of individuals and the amount of each of their claims was submitted. No further details were provided by Toshiba. In the case of the storeyard, warehouse and other assets, the alleged losses were not listed by individual item, but were grouped into four categories without further details.

264. With respect to the assets lost at the site office, the Panel finds that Toshiba demonstrated its ownership, the acquisition costs and the presence of the assets in Kuwait at the time of Iraq's invasion. Making an appropriate adjustment to the value of the assets, the Panel finds that the value of the loss is US$30,000. In respect of the other assets, the Panel finds that Toshiba, even after further requests from the secretariat, did

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not submit any evidence of Toshiba's ownership, the acquisition costs and the presence of the assets in Kuwait at the time of Iraq's invasion.

3. Recommendation for loss of tangible property

265. The Panel recommends compensation in the amount of US$30,000 for loss of tangible property.

B. Payment or relief to others

266. Toshiba seeks compensation in the amount of US$48,930 for payment or relief to others.

267. Toshiba provided no details concerning the factual background of, or legal basis of, this loss element. It is unclear whether this loss element is a claim for evacuation costs or for another type of payment or relief to others, or, alternatively, whether (contrary to what is stated on the category "E" claim form), it is in actual fact a claim for loss of tangible assets owned by the relevant employees of Toshiba.

268. Toshiba did not provide any of the information or documentation requested to support the alleged losses.

269. The Panel recommends no compensation for payment or relief to others.

C. Summary of recommended compensation for Toshiba

270. Based on its findings regarding Toshiba's claim, the Panel recommends compensation in the amount of US$30,000. The Panel finds the date of loss to be 2 August 1990.

IX. THE CLAIM OF MUNIR SAID MOH'D DAWUD SAMARA

(EMIRATE GENERAL CONTRACTING ESTABLISHMENT)

271. Munir Said Moh'd Dawud Samara ("Munir Samara") is a Jordanian individual holding a 68.5 per cent share in the Jordanian-registered partnership, Emirate General Contracting Establishment (the "Partnership"). The Partnership performed construction work on the Baghdad Alqaim Akashat Railway Project (the "Railway Project") and the Takrit Hotel Project (the "Hotel Project") in Iraq.

272. Munir Samara seeks compensation in the amount of US$3,814,189 for contract losses, loss of tangible property (fully furnished camp and construction equipment) and losses related to a performance bond. Munir Samara seeks 68.5 per cent of the losses allegedly incurred by the Partnership. Munir Samara stated that the Partnership has ceased operating permanently and has been placed into liquidation. The whereabouts of the second partner in the Partnership is unknown.

A. Contract losses

1. Facts and contentions

273. Munir Samara seeks compensation in the amount of US$2,492,478 for contract losses, including US$2,163,562 for the Railway Project and US$328,916 for the Hotel Project.

274. Munir Samara's original claim neither described the nature of his claim for contract losses nor contained supporting evidence. However, Munir Samara did submit a letter of explanation together with several documents in support of the alleged losses.

2. Analysis and valuation

(a) The Railway Project

275. Munir Samara provided a copy of the project contract (the "Railway Project Contract") dated 11 May 1982 entered into between the Partnership and the State Company for Industrial Projects of Iraq (the "First Employer"), which provides for the construction of passenger buildings and houses. The total contract price in the Railway Project Contract is US$6,294,682. Under the Railway Project Contract, the Partnership was required to complete the work within 20 months of commencement.

276. It is unclear to the Panel how Munir Samara calculated the amount of his alleged loss. A letter dated 27 August 1986 from the Iraqi employer to the State Tax Authority, Baghdad, indicates that the balance outstanding to the Partnership was ID 504,923. Using the exchange rate set forth in the letter (the contract rate), the United States dollar equivalent of this amount is US$1,620,803. Munir Samara did not explain the basis of his claim for the remaining amount, namely US$542,759.

277. The letter dated 27 August 1986 from the Iraqi employer to the State Tax Authority states that interim payments under the Railway Project Contract were made between 1982 and 1985 and that the Railway Project was completed on 18 January 1986.

278. Munir Samara also submitted a letter dated 17 May 1988 from the Iraqi employer, which indicates that the Iraqi employer awarded the Partnership a further contract for the construction of 30 additional transfer stations to be completed within a 24 month period. Munir Samara made no further reference to this other contract.

279. This Panel has interpreted the "arising prior to" clause in resolution 687 (1991), which limits the jurisdiction of the Commission, so as to exclude debts of the Government of Iraq if the performance relating to that obligation took place prior to 2 May 1990. The Panel finds that the State Company for Industrial Projects of Iraq is an agency of the State of Iraq.

280. The supporting documentation provided by Munir Samara indicated that the performance that created the debts in question occurred between 1982 and 1986. The Panel finds that the contract losses alleged by Munir Samara relate entirely to work that was performed prior to 2 May 1990.

281. The claim for contract losses under the Railway Project Contract is outside the jurisdiction of the Commission and is not compensable under Security Council Resolution 687 (1991). Accordingly, the Panel is unable to recommend compensation for the Railway Project.

(b) The Hotel Project

282. In support of his claim for this project, Munir Samara provided a letter dated 23 October 1985 from the State Establishment for Tourism of Iraq (the "Second Employer") addressed to the Partnership, which stated that the second Iraqi employer had decided to award the Partnership the Hotel Project and invited the Partnership to "come to sign the contract".

283. In addition, Munir Samara provided a letter dated 25 October 1992 from the Ministry of Finance of Iraq, Directorate of Liquidation of the General Tourism Organization (dissolved), to the Partnership, which set out the interim payments transferred in respect of the Hotel Project. According to this letter, interim payments totalling ID 83,771 and representing 70 per cent of the interim payments to be paid under the Hotel Project Contract were made between 8 January 1986 and 23 February 1987 for the account of Antone Yaquob Andon. The claim documentation contains no information about the identity of this person or his connection (if any) with the Partnership.

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284. Munir Samara failed to provide a copy of the Hotel Project Contract and evidence that either he or the Partnership had any existing rights to receive payments under the Hotel Project Contract. The reference to the payee of interim payments under the Hotel Project Contract raises doubts as to the rights of Munir Samara or the Partnership under the Hotel Project Contract. The Panel is unable to recommend that compensation be awarded for amounts allegedly due under the Hotel Project Contract.

3. Recommendation for contract losses

285. Accordingly, the Panel is unable to recommend compensation for contract losses.

B. Loss of tangible property

1. Facts and contentions

286. Munir Samara seeks compensation in the amount of US$1,190,741 for loss of tangible property, including a fully furnished campsite (US$200,000) and plant, equipment and vehicles used on the Railway Project (US$990,741).

2. Analysis and valuation

287. Munir Samara alleged that the campsite furnishings were abandoned due to Iraq's invasion, but provided no evidence in support of this allegation. It is unclear which items are included in the claim and what the values of these items are. The costs of the campsite furnishings were not a separate item charged to the relevant Iraqi employer, but a cost built into the rates charged under the relevant project contract. The Panel, therefore, recommends no compensation for lost campsite furnishings.

288. Munir Samara alleged that the plant, equipment and vehicles used on the Railway Project were not able to be re-exported and were subsequently used by the Government of Iraq on the Sadam River project. The only document provided by Munir Samara in support of its alleged loss is a letter dated 13 August 1986 from the Ministry of Finance of Iraq addressed to Alqaim Customs requesting it to provide a "receipt report stipulating missing items" from the attached list of equipment and machinery belonging to the Partnership. A list attached to the letter and entitled, "List of equipment confiscated by the Government of Iraq for the construction of Sadam River" lists 17 items of equipment (vehicles, loaders and an excavator) together with their respective vehicle plate numbers and cost.

289. The total value of the equipment is stated in the list attached to the letter from the Ministry of Finance of Iraq as US$742,200 (in 1986). Munir Samara stated the value of the equipment "up to 1993, including interest for 7 years" as US$1,446,338. Munir Samara did not explain how he

calculated the amount claimed. Munir Samara ignored depreciation and made no allowance in the claim for the cost of transportation and re-export to Jordan.

290. Munir Samara failed to show the direct link between the alleged loss and Iraq's invasion and occupation of Kuwait. It appears from the evidence provided by Munir Samara that the equipment and machinery belonging to the Partnership were confiscated by the Government of Iraq as early as 1986, four years prior to Iraq's invasion of Kuwait. Accordingly, the Panel recommends no compensation for loss of plant, equipment and vehicles.

3. Recommendation for loss of tangible property

291. The Panel recommends no compensation for loss of tangible property.

C. Lost performance bond

292. Munir Samara seeks compensation in the amount of US$130,970 for losses related to a performance bond. Under the Railway Project Contract, the Partnership was required to provide the State Company for Industrial Projects of Iraq with a performance bond in the amount of US$313,176 to be issued by the Jordan-Kuwait Bank, Jabal Amman branch.

293. According to Munir Samara, the Jordan-Kuwait Bank kept extending the guarantee until 15 October 1991 "without any justified reason". Munir Samara provided no evidence in support of this allegation.

294. The Railway Project Contract does not state the length of time the performance bond was to be held after completion of the Railway Project. The Panel finds that the usual practice on projects of this nature was for the performance bond to be cancelled upon completion of the work on the project, which, in the case of the Railway Project was 1 September 1985. Munir Samara provided no indication as to why the performance bond was not cancelled upon completion of the work on the Railway Project and failed to establish that the extension of the performance bond was a direct result of Iraq's invasion and occupation of Kuwait.

295. For the reasons stated above, the Panel recommends no compensation for lost performance bond.

D. Summary of recommended compensation for Munir Samara

296. Based on its findings regarding Munir Samara's claim, the Panel recommends no compensation.

X. THE CLAIM OF EBEN S.A.

297. Eben S.A. ("Eben") is a Moroccan corporation specializing in cabinetmaking and the manufacture of contemporary furniture for the Government of Iraq. In 1990, it was engaged as a contractor by the Government of Iraq to carry out work on the presidential palace in Basra, Iraq. Eben requests compensation in the amount of US$2,112,600 for contract losses, business transaction costs (amounts due to suppliers), tangible property losses, payments or relief to others and financial losses.

298. Eben alleged that it worked exclusively for the Government of Iraq, and lost its sole market when Iraq's invasion occurred. It alleged that, as a result of this, it was forced to dismiss unproductive workers. Additionally, various items of stock and materials, which it had manufactured for exclusive use by the Government of Iraq, were devalued and unusable resulting in storage costs for Eben.

299. In response to an enquiry by the secretariat for additional evidence, Eben increased its alleged loss by adding claims for "legal proceedings for unpaid insurance premiums" and sale of property and by increasing the amounts requested for loss of profit and loss of sole client/market. Eben withdrew its claims for business transaction costs and "contention with staff". A response to an inquiry for additional evidence is not an opportunity for a claimant to increase the quantum of a claim previously submitted. This increase was not accepted by the Panel, as the Panel reviews only the claim as initially presented.

A. Contract losses

1. Facts and contentions

300. Eben seeks compensation in the amount of US$337,000 for contract losses under two contracts. Eben entered into the following contracts with the Government of Iraq (acting through the Embassy of Iraq in Rabat, Morocco):

(a) Contract relative to the execution of Shanashil Works Project 520 in Basra, Iraq (dated 21 June 1990) (the "first Project Contract"); and

(b) Contract relative to the execution of works of wooden roofs and various finishing works in the residence of the Nakib of Al Basra (dated 24 June 1990) (the "second Project Contract") (collectively referred to as the "Project Contracts".)

301. The deadline for execution of the works was 24 September 1990 under the first Project Contract and 25 September 1990 under the second Project Contract. Under both Project Contracts, Eben was required to provide the services of 15 workers and one technical supervisor at each project site in

Iraq. The contract prices for execution of the works were US$320,000 for the first Project Contract and US$803,053 for the second Project Contract.

302. It appears that Eben calculated its stated loss based on a 30 per cent profit on the contract prices.

303. Finally, Eben stated that, prior to Iraq's invasion, it had anticipated being able to enter into future contracts with the Government of Iraq. However, as a consequence of Iraq's invasion and occupation of Kuwait, the negotiations relating to these future contracts came to an end.

2. Analysis and valuation

304. In support of its claim for contract losses, Eben submitted copies of the Project Contracts. Eben also provided a letter dated 19 December 1992 addressed to it from the Embassy of Iraq in Rabat in which the Embassy acknowledges a "credit balance" in favor of Eben in the amount of US$449,221.

305. Eben stated that on 24 October 1995, it received an amount of US$119,507 from the Government of Morocco by way of compensation for its losses suffered under the Project Contracts.

306. The Panel considers the letter dated 19 December 1992 addressed to Eben from the Embassy of Iraq in Rabat to be evidence of an acknowledgment of debt owed by the Government of Iraq to Eben. The Panel finds that the acknowledgment of debt relates to the work performed by Eben under the Project Contracts.

307. The Panel is satisfied that Eben's stated losses under the Project Contracts were a direct result of Iraq's invasion and occupation of Kuwait, as Eben was unable to continue work under the Project Contracts after the invasion. The Panel considers that Eben provided sufficient evidence to establish that it was owed the amount of US$449,221 by the Government of Iraq. From this amount, the amount of compensation already paid to Eben by the Government of Morocco (US$119,507) should be deducted.

3. Recommendation for contract losses

308. The Panel recommends compensation in the amount of US$329,714 for contract losses.

B. Business transaction costs

309. Eben withdrew its claim for business transaction costs.

C. Loss of tangible property

310. Eben seeks compensation in the amount of US$479,000 for loss of tangible property. Eben alleged that its furniture and machinery stocks, including sculpted wood, decorated and turned, were devalued by approximately 60 per cent and that it incurred storage expenses. Eben also alleged that it purchased new woodwork machinery to satisfy the specifications of the Government of Iraq. All of this machinery rapidly became inoperative and non-productive. The total claim amount is broken down into US$467,000 for stock devaluation and US$12,000 for stock storage expenses.

311. Eben submitted no evidence in support of its claim for loss of tangible property.

312. The Panel recommends no compensation for loss of tangible property.

D. Payment or relief to others

313. Eben withdrew its claim for losses incurred with respect to dismissing redundant staff.

E. Financial losses

1. Facts and contentions

(a) Cessation of group company

314. Eben seeks compensation in the amount of US$210,000 for "cessation of Gamma-Design". Eben alleged that the damage caused by workers to the group company Gamma-Design in January 1991 required the cessation of activity and sale of the company for the price of a symbolic dirham.

(b) Loss of sole client

315. Eben seeks compensation in the amount of US$1,011,000 for loss of the Government of Iraq as its sole client.

316. Eben alleged that, in the months following Iraq's invasion, it attempted to implement a more commercial approach by writing to potential Moroccan customers, attending a trade fair in Casablanca and launching a press campaign in specialized publications in Morocco. The object of this new approach was to adapt its staff to the requirements of the Moroccan market with a view to winning new customers in its home country. However, by June 1991, Eben's creditors were threatening liquidation.

317. Eben alleged that the claim for the loss of the Government of Iraq as its sole client entailed a benefit loss for a period of three years and, on

the basis of a 30 per cent benefit margin, amounted to US$337,000 multiplied by three years, or US$1,011,000.

(c) Loss of capital

318. Eben seeks compensation in the amount of US$75,600 for loss of capital revenues (which it describes on the "E" claim form as "3 years payment of capital") for the three years preceeding the claim. The amount claimed was calculated using the 12 per cent creditor rates granted to Moroccoan companies. Eben provided no further details, and, consequently, both the factual background to, and the legal basis of, the claim are unclear.

2. Analysis and valuation

(a) Cessation of group company

319. Eben submitted no evidence in support of the alleged damage to the Gamma-Design company.

(b) Loss of sole client

320. This alleged loss is a loss of future profits. First, Eben did not demonstrate that its loss of future profits was a direct result of Iraq's invasion and occupation of Kuwait. Second, Eben made no showing of its ability to earn a profit on the existing contracts. Finally, as discussed in paragraphs 77-79, supra, the Panel recommends compensation for loss of profits only on contracts that were in existence at the time of Iraq's invasion of Kuwait and could not be fully performed as a result of Iraq's invasion and occupation of Kuwait. Alleged loss of profits on anticipated future contracts is not a direct result of Iraq's invasion and occupation of Kuwait.

321. The Panel recommends no compensation for loss of future profits.

(c) Loss of capital

322. It appears that the alleged loss of capital is an alternative claim for the recovery of the alleged loss of the related company, Gamma-Design. The Panel finds that Eben did not submit any evidence to establish that the loss was a direct result of Iraq's invasion and occupation of Kuwait or that such a loss was incurred.

3. Recommendation for financial losses

323. The Panel recommends no compensation for financial losses.

F. Summary of recommended compensation for Eben

324. Based on its findings regarding Eben's claim, the Panel recommends compensation in the amount of US$329,714. The Panel finds the date of loss to be 19 December 1992.

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XI. THE CLAIM OF DUTCH AGRO PRODUCTS B.V.

325. Dutch Agro Projects B.V. ("Dutch Agro"), a Dutch corporation, entered into a contract dated 10 July 1990 (the "Contract") with the Kuwait Institute for Scientific Research ("KISR") for the supply, installation, construction, testing and commissioning of an automated greenhouse project (the "Project") on a turnkey basis in Kuwait.

326. Dutch Agro seeks compensation in the amount of US$89,627 for loss of profits, loss of interest on performance bond, extra labour hours and storage costs.

A. Loss of profits

1. Facts and contentions

327. Dutch Agro seeks compensation in the amount of US$36,107 for loss of profits. Dutch Agro calculated its loss of profits at 15 per cent of the total value of the Contract. Dutch Agro alleged that, due to Iraq's invasion and occupation of Kuwait, work on the Project could not be performed as scheduled, and that Dutch Agro agreed with KISR to suspend work on the Project for two years and six months. Dutch Agro stated in its original claim in February 1993 that it entered into new agreements with KISR for the execution of the Contract after a delay of more than two and a half years. However, Dutch Agro did not provide copies of the new agreements.

328. Dutch Agro also seeks interest in the amount of US$21,063 measured by the retail price index. For the reasons stated in paragraph 37, the Panel does not address the issue of compensability of claims for interest.

2. Analysis and valuation

329. In support of its allegation of loss of profits, Dutch Agro provided a copy of the Contract. However, it failed to provide a number of documents forming an integral part of the Contract, such as KISR's general conditions of tenders and contracts and Dutch Agro's tender for the Project. Dutch Agro did not provide financial statements, balance sheets, copies of the original calculations of profit as incorporated within the make-up of the Project, management reports on actual financial performance or copies of the new agreements entered into with the KISR. Dutch Agro stated that such documents were unavailable.

330. The Panel was unable to verify the alleged profit margin (15 per cent) from the documents and information provided by Dutch Agro. Further, Dutch Agro failed to provide sufficient evidence of the ongoing profitability of the Contract. Moreover, since Dutch Agro recommenced work under the Contract in 1993, Dutch Agro's profit under the Contract appears to have been, at most, merely delayed and not lost.

3. Recommendation for loss of profits

331. The Panel recommends no compensation for loss of profits.

B. Loss of interest on performance bond

1. Facts and contentions

332. Dutch Agro seeks US$2,889 for loss of interest on a performance bond that it allegedly maintained for one year (from 17 July 1990 to 28 August 1991). Under the terms of the Contract, Dutch Agro was required to establish a performance bond in favor of KISR in the amount of 10 per cent of the total Contract value. The performance bond was to become effective from the date on which KISR opened an irrevocable letter of credit in favour of Dutch Agro and was to be valid for one year after the issue of a Completion Certificate for the works.

2. Analysis and valuation

333. Dutch Agro provided a copy of a document dated 17 July 1990, issued by the Credit Lyonnais Bank Nederland N.V., requesting the Commercial Bank of Kuwait S.A.K. to issue to KISR, on behalf of Dutch Agro, the performance bond attached to the request. Dutch Agro further provided a letter of credit dated 26 December 1991, issued by the Commercial Bank of Kuwait S.A.K. in favour of the Credit Lyonnais Bank Nederland N.V., for the benefit of Dutch Agro. Dutch Agro stated that the performance bond was in effect from 17 July 1990 to 28 August 1991. However, given that the letter of credit, a pre-condition to the commencement of the project, is dated 26 December 1991 (i.e., eight months after the liberation of Kuwait), it is unclear how this could be relevant either to this loss item or the Contract dated 10 July 1990.

334. Dutch Agro stated that the Commercial Bank of Kuwait S.A.K. refused to cancel the performance bond due to operational regulations. Dutch Agro did not state what those operational regulations were. Dutch Agro did not provide copies of any correspondence exchanged with either the Commercial Bank of Kuwait S.A.K. or Credit Lyonnais Bank Nederland N.V. that would establish that Dutch Agro attempted to cancel the performance bond. Finally, Dutch Agro did not explain how the alleged loss is a direct result of Iraq's invasion and occupation of Kuwait.

3. Recommendation for loss of interest on performance bond

335. The Panel recommends no compensation for loss of interest on performance bond.

C. Extra labour hours

1. Facts and contentions

336. Dutch Agro seeks compensation in the amount of US$6,996 for extra labour hours spent drafting new agreements and making new drawings. Dutch Agro calculated the amount by multiplying the hourly rate of 80 Netherlands guilders (f.) by a total of 154 hours.

2. Analysis and valuation

337. Dutch Agro was asked to provide details of the number of its employees who worked on the new agreements and drawings and their respective hourly rates. In response, Dutch Agro stated that the rate was correct, but failed to attach copies of the relevant pay slips in support. Dutch Agro provided an invoice dated 15 March 1998 issued by a Dutch company operating from the same business premises as Dutch Agro and with similar telephone and facsimile numbers. The invoice is for a total of 154 hours at f. 80 per hour for preparing new technical specifications and new drawings. However, Dutch Agro failed to provide evidence that it actually paid the invoiced amount.

338. The Panel finds that, in accordance with general commercial practice, the costs of drawing up a new contract with new specifications would normally have been included in the rates charged in the new contract. Dutch Agro failed to provide a copy of the new contract.

3. Recommendation for extra labour hours

339. The Panel recommends no compensation for extra labour hours.

D. Storage costs

340. Dutch Agro seeks compensation in the amount of US$22,572 for costs relating to the storage of construction materials for a three year period. Dutch Agro stated that, due to Iraq's invasion and occupation of Kuwait, it had to cancel orders placed with third parties and store materials already delivered to it.

341. Dutch Agro provided an invoice for storage dated 31 December 1992, issued by a company operating from the same business premises as Dutch Agro and with similar telephone and facsimile numbers. The invoice is for 30 months of storage (between July 1990 and December 1992) at f. 1,325 per month. However, Dutch Agro failed to provide evidence of payment of the invoice. The Panel finds that Dutch Agro did not submit sufficient evidence to support these allegations.

342. The Panel recommends no compensation for storage costs.

E. Summary of recommended compensation for Dutch Agro

343. Based on the findings regarding Dutch Agro's claim, the Panel recommends no compensation.

XII. THE CLAIM OF EEI CORPORATION

344. EEI Corporation ("EEI"), a Philippine corporation, entered into a sub-contract agreement dated 26 June 1988 (the "Contract") with Al-Khamis & Al-Aryan Trading & Contracting Company (the "Main Contractor") for the construction of 93 housing units in the Al Qurain Housing Area, Kuwait (the "Project"). The main Project contract was signed between the Main Contractor and the National Housing Authority of Kuwait (the "Employer"). EEI seeks compensation in the amount of US$998,872 for contract losses, loss of profits, loss of tangible assets, staff wages and evacuation expenses.

A. Contract losses

1. Facts and contentions

345. EEI seeks compensation in the amount of US$483,375 for unpaid invoices for work on the Project.

346. Under the Contract, EEI was required to construct 93 housing units. In order to carry out the construction work, EEI recruited and supervised 370 labourers and other staff. EEI commenced its performance on the Project on 1 August 1988 and was required to complete the Project by 31 October 1989. EEI did not state the date on which the work on the Project was abandoned, the circumstances of the abandonment or whether it subsequently recommenced work on the Project.

2. Analysis and valuation

347. Pursuant to the terms of the Contract, EEI was entitled to invoice the Main Contractor on a monthly basis. The Main Contractor was required to make payment within the earlier of seven days after receipt of the respective payment from the Employer or 45 days after the date of receipt of the relevant invoice. EEI provided copies of five invoices for the period March to July 1990, which it alleged were unpaid by the Main Contractor. EEI did not provide any information as to why the invoices remained unpaid on 2 August 1990 or the steps taken by EEI to ensure the timely payment of the unpaid invoices.

348. EEI did not provide details of the work that it performed under the Contract or evidence of how the amounts claimed were calculated. Furthermore, it did not provide evidence that the amounts claimed were not paid by the Main Contractor. Accordingly, the Panel finds that EEI did not submit sufficient evidence of its alleged loss.

3. Recommendation for contract losses

349. The Panel recommends no compensation for contract losses.

/...

B. Loss of profits

1. Facts and contentions

350. EEI seeks compensation in the amount of US$416,038 for "lost production contribution". This alleged loss is a loss of profits for the work that could not be completed under the Contract due to Iraq's invasion and occupation of Kuwait.

2. Analysis and valuation

351. Other than a copy of the Contract, EEI provided no documents or details about how the claimed amount was calculated in support of its allegation of loss of profits. The Contract provides for invoices to be issued on a monthly basis based on the percentage of the total work completed. The Panel finds that this payment regime indicates that the profits accrued on a monthly basis.

352. The Panel finds that EEI failed to provide sufficient evidence in support of its alleged loss. Furthermore, in light of the fact that the profits under the Contract accrued on a monthly basis, EEI failed to prove that it sustained a loss.

3. Recommendation for loss of profits

353. The Panel recommends no compensation for loss of profits.

C. Loss of tangible property

354. EEI seeks compensation in the amount of US$47,235 for tangible assets that were lost after EEI left Kuwait. The assets consisted mainly of office equipment, computers, air conditioners and electronic consumer items, such as televisions and video recorders. EEI stated that the assets in question were left behind at its Kuwait office, the Project site office, a rented warehouse space in Aoha and a boiler project in Mina Az-Zour.

355. EEI stated that accounting records and invoices relating to the purchase and ownership of the assets were left behind at its offices when EEI's employees were forced to depart Kuwait. EEI provided a list of the relevant assets, including the serial and the model numbers of the assets together with their value. EEI gave no indication of the age of the assets and did not make any adjustment for depreciation. The Panel finds that EEI did not provide sufficient evidence (a) of its ownership of the assets, (b) of the cost of the assets, or (c) that these items were in Kuwait on 2 August 1990.

356. The Panel recommends no compensation for loss of tangible property.

D. Payment or relief to others

1. Facts and contentions

357. EEI seeks compensation in the amount of US$52,224, including expenses incurred in evacuating its employees from Kuwait (US$25,125) and financial assistance provided to its employees who were evacuated from Kuwait (US$27,099).

358. EEI evacuated approximately 100 staff members between 26 August and 13 September 1990. The expenses incurred during the evacuation included taxi fares, hotel bills and food as well as cash advances that were given to some of the evacuees.

359. EEI allegedly paid each of its employees evacuated from Kuwait financial assistance in the amount of one month's salary upon their return to Manila. This amount was intended to cover the period between Iraq's invasion and their return to Manila. EEI alleged that it paid some managers who took responsibility to ensure the safety and well-being of all evacuated staff an additional amount of salary for one half-month.

2. Analysis and valuation

360. In support of EEI's claim for evacuation expenses, EEI provided a copy of an "expense liquidation report" prepared by the supervisor in charge of the evacuation. The expense liquidation report is an unusually detailed contemporaneous record, which, in the circumstances, the Panel considers to be sufficient secondary evidence of EEI's losses. On the basis of the expenses incurred by EEI, as evidenced by the expense liquidation report, the Panel recommends compensation in the amount of US$25,125 for evacuation expenses.

361. In respect of EEI's claim for financial assistance given to its employees, EEI provided various typed lists containing the names of the employees together with the corresponding amounts paid. EEI also provided 93 forms, each entitled "Release Waiver and Quitclaim". These forms, which have been signed by employees of EEI, essentially state that the employee signing the form received the amount stated therein, that his or her employment with EEI ceased as of 2 August 1990 and that EEI is released and discharged from any further claims.

362. The Panel finds that the Release Waiver and Quitclaim forms constitute sufficient evidence that EEI paid the amounts claimed to its evacuated employees. The Panel finds that the amounts claimed for financial assistance given to EEI's employees were a direct consequence of Iraq's invasion and occupation of Kuwait. For these reasons, the Panel recommends compensation in the amount of US$27,099 for financial assistance paid to the employees of EEI.

3. Recommendation for payment or relief to others

363. The Panel recommends compensation in the amount of US$52,224 for payment and relief to others.

E. Summary of recommended compensation for EEI

364. Based on its findings regarding EEI's claim, the Panel recommends compensation in the amount of US$52,224. The Panel finds the date of loss to be 4 September 1990.

XIII. THE CLAIM OF GESTIONES REUNIDAS DE CONSTRUCCION S.A.

365. Gestiones Reunidas de Construcción, S.A. ("GRECSA"), a Spanish construction company, seeks compensation in the amount of US$4,179,240 for contract losses and interest, loss of tangible assets and payment or relief provided to its employees.

366. GRECSA entered into a contract (the "Contract") with the Government of Iraq, represented by the Directorate of Air Defence Works ("AFADW") acting on behalf of the Ministry of Defence, pursuant to which it agreed to design, construct and erect 108 aircraft shelters at six sites in Iraq (the "Project"). The Contract was dated 28 December 1977. Pursuant to fourteen different appendices to the Contract subsequently entered into between GRECSA and AFADW, GRECSA agreed to carry out additional works on the Project, including the construction of fourteen supplementary shelters at Kirkuk.

367. In its claim, GRESCA made allowance for certain deductions in the amount of US$94,895, which were agreed between GRESCA and the Government of Iraq in October 1992.

A. Contract losses

1. Facts and contentions

368. GRECSA seeks compensation for unpaid work completed by it under the Contract (US$1,576,823), for the work it had to abandon due to Iraq's invasion and occupation of Kuwait (US$280,055) and for payments due under the final acceptance certificate (US$691,083).

369. GRECSA also claims interest on the unpaid contractual amounts in the amount of US$501,158. For the reasons stated in paragraph 37, the Panel does not address the issue of compensability of claims for interest.

370. GRECSA stated that it was forced to abandon work on the Project between September 1980 and June 1981 due to the war between Iran and Iraq. GRECSA alleged it abandoned the Project again on 2 August 1990 and had no information of the whereabouts or state of its machinery and facilities until October 1992, when it sent a representative to Amman to meet with representatives of the Government of Iraq in order to settle the pending affairs.

371. The minutes of the meeting between representatives of GRECSA and representatives of the Government of Iraq in Amman, from 10 to 16 October 1992, were signed by both parties. At the meeting, the parties agreed that, as soon as the minutes were approved by the Government of Iraq, the Contract and the bank guarantee issued by the Rafidain Bank in favor of GRECSA would both be cancelled. GRECSA maintained that the minutes constituted an acknowledgment of debt by the Government of Iraq. GRECSA

expected the approval of the Government of Iraq to take place within two weeks of the meeting.

372. On 28 January 1993, the Embassy of the Republic of Iraq, Madrid, sent a letter to GRECSA, which stated that the responsible departments of the Government of Iraq had authorized the cancellation of the Contract and the implementation of the agreement evidenced by the minutes signed in Amman on 16 October 1992. The letter requested GRECSA to cancel the bank guarantee issued by the Rafidain Bank in the amount of US$20,227,026. GRECSA sent a response to this letter on 9 February 1993 in which it stated that it would proceed to cancel the bank guarantee in exchange for, first, a document signed by Iraq evidencing the cancellation of the Contract and, secondly, payment by Iraq of US$2,232,433 less ID 2,000. It is unclear how this amount was calculated by GRECSA. It does not appear to relate to any of the amounts that Iraq agreed in (Amman) it would pay GRECSA.

2. Analysis and valuation

(a) Unpaid work

373. In support of its claim for unpaid work completed by GRECSA under the Contract, GRECSA provided copies of the relevant invoices issued in 1988 and 1989. The invoices relate to work performed between January 1988 and November 1989. The amounts invoiced were due to be paid on 31 July 1990, 31 January 1991, 31 July 1991 and 31 January 1992, pursuant to the terms of an Agreement for Deferred Payment entered into between GRECSA and AFADW on 26 May 1988 (the "deferred payment agreement").

374. This Panel has interpreted the "arising prior to" clause in resolution 687 (1991), which limits the jurisdiction of the Commission, so as to exclude debts of the Government of Iraq if the performance relating to that obligation took place prior to 2 May 1990. The Panel finds that AFADW is an agency of the State of Iraq.

375. The supporting documentation provided by GRECSA indicated that the performance that created the debts in question occurred between January 1988 and November 1989. The Panel finds that the contract losses alleged by GRECSA relate entirely to work that was performed prior to 2 May 1990.

376. The Panel finds that the parties entered into the deferred payment agreement as a result of the financial difficulties experienced by AFADW, which led to an increasing delay in payments due under the Contract throughout the 1980's. The Panel further finds that the deferred payment agreement did not create new obligations on the part of AFADW for the purposes of resolution 687 (1991).

377. The Panel finds that the claim for unpaid work completed by GRECSA under the Contract is outside the jurisdiction of the Commission and is not compensable under resolution 687 (1991).

378. Accordingly, the Panel is unable to recommend compensation for unpaid work completed by GRECSA.

(b) Abandoned work

379. In respect of the claim for abandoned work by GRECSA due to Iraq's invasion and occupation of Kuwait, GRECSA provided a table containing a breakdown of the claimed amount. The table showed that the claimed amount relates to unpaid invoices for work performed on the Project, described by GRECSA as "work in progress". However, GRECSA's calculations are not supported by copies of the relevant invoices or other evidence. The list of invoices provided by GRESCA makes clear that all but two of the invoices were definitely issued prior to 2 May 1990; the two exceptions were issued at some uncertain date in 1990. In the absence of copies of these invoices, their precise dates are not identifiable.

380. Although requested to do so, GRESCA failed to describe the work that was in progress on 2 August 1990 and to provide a copy of the Contract.

381. Although GRECSA stated that it abandoned the Project on 2 August 1990, it failed to provide details of any work that was performed on or after 2 May 1990. The supporting documentation provided by GRECSA indicated that the performance that created the debts in question occurred prior to 2 May 1990.

382. The Panel finds that the claim for abandoned work is not shown to be within the jurisdiction of the Commission and is, therefore, not compensable under resolution 687 (1991).

383. Accordingly, the Panel is unable to recommend compensation for abandoned work.

(c) Payments due under the final acceptance certificate

384. In respect of the claim for payments due under the final acceptance certificate, GRECSA provided a table containing a breakdown of the claimed amount. The tables show that the claimed amount relates to amounts allegedly due under the final acceptance certificate. However, GRECSA's calculations are not supported by the final acceptance certificate or other evidence. It is not clear from the evidence provided when the final acceptance certificate was issued.

385. The minutes of the meeting held in Amman from 10 to 16 October 1992 indicate that the parties agreed that GRECSA was owed the amount of

US$691,083 for "invoices corresponding to the accepted FAC" and that Iraq acknowledged a debt to GRECSA in this amount.

386. Although GRECSA stated that it abandoned the Project on 2 August 1990, it failed to provide details of the date of issue of the final acceptance certificate or of any work that was performed on or after 2 May 1990. The supporting documentation provided by GRECSA indicates that the performance that created the debts in question occurred prior to 2 May 1990.

387. The Panel finds that the claim for payments due under the final acceptance certificate is not shown to be within the jurisdiction of the Commission and is not compensable under resolution 687 (1991).

388. Accordingly, the Panel is unable to recommend compensation for payments due under the final acceptance certificate.

3. Recommendation for contract losses

389. The Panel recommends no compensation for contract losses.

B. Loss of tangible property

1. Facts and contentions

390. GRECSA seeks compensation in the amount of US$1,125,016 for loss of tangible property, including heavy trucks, bulldozers, cranes, cars and other construction equipment. GRECSA stated that the machinery was mainly acquired in 1978 and 1979. However, because of the interruption to the work on the Project that occurred as a result of the war between Iran and Iraq, the machinery arrived at the Project site in 1982 and 1983.

391. GRECSA further stated that, in accordance with the accounting standard relating to annual depreciation in force in Spain in 1990, the machinery had been totally written off in GRECSA's accounts. GRECSA stated that the purchase value of its tangible assets located at the Project site as of 2 August 1990 was US$11,250,163. For the purposes of its claim, GRECSA applied a depreciation rate of 10 per cent per annum to the relevant assets, taking into account the nine year period between 1981 and 1990 and ending on 2 August 1990. Accordingly, GRECSA calculates its loss as the residual value of 10 per cent of the listed tangible assets.

2. Analysis and valuation

392. In support of its claim for loss of tangible assets, GRECSA provided a list of its assets that were allegedly present in Iraq at the time of Iraq's invasion. In addition, GRECSA provided a list of machines, tools and vehicles, which appear to have been used as collateral to obtain an

Iraqi dinar loan from the Rafidain Bank. This list demonstrates that the relevant assets were owned by GRECSA and were in Iraq on 2 August 1990.

393. GRECSA also provided shipping transport insurance documents and bills of lading, which establish that GRECSA purchased insurance coverage for certain assets that were to be shipped from Madrid to Iraq and that the assets to be shipped were delivered and received by the shipper for shipment. However, the Panel finds that these documents do not establish either GRECSA's ownership of the assets or the importation of the assets into Iraq.

394. GRECSA also provided a customs declaration relating to the importation of certain materials into Iraq. The Panel finds that, whilst this document is evidence of the importation of those assets into Iraq, GRECSA did not provide evidence of its ownership of the assets.

395. GRECSA also provided a report, dated 17 July 1998, prepared by the former Deputy Head of Mission of the Spanish Embassy in Iraq. The report arose out of an official mission to Iraq led by the former Deputy Head of Mission in June 1991. Photographs attached to the report were presented by GRECSA to confirm the "total uselessness" of its machinery and equipment. The report states that when the former Deputy Head of Mission visited the installations at the Project site at Abu Ghraib, he found that office installations had been damaged and vehicles and their parts had been stolen and damaged.

396. The Panel finds that, although the report and photographs confirm that some machinery and equipment was in Iraq at the time of the mission, and that some of this machinery and equipment clearly had been damaged, they do not provide evidence of the time of the damage, the theft, GRECSA's ownership of the assets, or of the magnitude of the alleged loss.

397. GRECSA stated that it kept no invoices relating to the acquisition of the machinery and equipment, as it destroyed these after the five-year minimum retention of documents period in force in Spain.

398. The minutes of the meeting held in Amman from 10 to 16 October 1992 indicate that the parties agreed that Iraq would reimburse to GRECSA the amount of US$500,000 plus ID 100,000 in respect of "temporary input equipment machinery and spare parts". The minutes do not identify the machinery and spare parts in respect of which agreement for reimbursement was allegedly reached between GRECSA and Iraq. GRECSA stated that the amount agreed upon at this meeting was inappropriate as it did not reflect the true value of the assets as at the date of their alleged loss.

399. In order to maintain this claim, it was necessary for GRECSA to demonstrate that it had machinery in Iraq that was available to it on 2 August 1990, and that at that date the machinery had some value. The Panel

finds that GRECSA failed to identify the machinery and equipment, imported into Iraq in the early 1980's, to satisfy this requirement. Indeed, the Panel noted that all the machinery and equipment had been written off in GRECSA's books.

3. Recommendation for loss of tangible property

400. The Panel recommends no compensation for loss of tangible property.

C. Payment or relief to others

401. GRECSA seeks compensation in the amount of US$100,000 in respect of the detention of two of its employees by the Iraqi authorities. The operations manager and the chief engineer for the Project were allegedly detained in Iraq from 2 August 1990 to 16 October 1990 after Iraqi authorities had refused to issue them exit visas.

402. The only documents provided by GRECSA in support of this loss element are a copy of the passport of the operations manager and the death certificate of the chief engineer, dated 23 March 1997. The report dated 17 July 1998 prepared by the former Deputy Head of Mission of the Spanish Embassy in Iraq also refers to the circumstances of the detention.

403. GRECSA did not specify how it sustained a loss of US$100,000 due to the detention of its employees. However, GRECSA stated that the amount requested was not calculated exactly and was considered to be an indemnity for the detention of its two employees for two and a half months.

404. GRECSA failed to demonstrate that it incurred a loss in respect of the detention of its employees. The Panel finds no evidence that GRECSA made any payment to its detained employees.

405. The Panel recommends no compensation for payment or relief to others.

D. Summary of recommended compensation for GRECSA

406. Based on its findings regarding GRECSA's claim, the Panel recommends no compensation.

XIV. THE CLAIM OF KVAERNER GENERATOR AB

A. Facts and contentions

407. Kvaerner Generator AB ("Kvaerner"), a Swedish private limited company, seeks compensation in the amount of US$697,836 for the non-productivity of eight of its employees who were detained in Iraq during the occupation of Kuwait. Kvaerner alleged that the eight employees were held captive in Iraq for a total of 886 man-days during which the employees were idle and, as a result, Kvaerner suffered economic damage in the above amount.

B. Analysis and valuation

408. While Kvaerner submitted its claim as one for losses due to non-productivity, it is, in actual fact, a claim for loss of profits and overheads. Kvaerner allegedly suffered loss of profits in the amount of US$552,795 and an increase in overhead costs at its head office in Sweden in the amount of US$145,041.

409. In order to prove the claim for loss of profits Kvaerner must demonstrate that its employees were working on projects in Iraq prior to Iraq's invasion of Kuwait, that the amounts sought by Kvaerner were actually paid to them, that, but for Iraq's invasion and occupation of Kuwait, they would have been profitably employed, and that no productive work could be performed by Kvaerner's employees in the circumstances.

410. Kvaerner provided a copy of a set of general terms and conditions of a Swedish trade association, which states the hourly charge-out rates for Supervising Engineers and Chief Erectors as 3,000 Swedish krona (SKr) and SKr 3,200, respectively, based on a 48 hour work week. In addition, Kvaerner charged a daily allowance at the rate of SKr 540.

411. The Panel finds that Kvaerner's calculations assume 100 per cent recovery of chargeable time for seven days per week without substantiation of work that would have been performed had Iraq not invaded and occupied Kuwait. Without evidence of work that the employees would have performed had they not been taken hostage, there is no evidence of a loss. Finally, Kvaerner did not submit any evidence of payment to its employees during their detention.

412. With regard to the alleged head office losses, Kvaerner seeks compensation for the salary of an administrative coordinator, telephone charges, and travelling costs. Kvaerner provided no documentation concerning the factual background to, or legal basis of, this loss element.

C. Summary of recommended compensation for Kvaerner

413. Based on its findings regarding Kvaerner's claim, the Panel recommends no compensation.

XV. THE CLAIM OF INPRO AG K. WIRTH

414. Inpro AG K. Wirth ("Inpro") was a Swiss private limited company with operations and bases in other countries. The main business of Inpro was the engineering and construction of plants for manufacturing use. Inpro seeks compensation in the amount of US$648,921 for contract losses.

415. Inpro has been liquidated. An apparent successor in interest, Inpro-Engineering Ltd., provided additional information and documentation regarding the claim. The successor-in-interest stated that the file relating to Inpro's claim for compensation was transferred to it and it was requested to pursue the claim with the Commission.

A. Facts and contentions

416. Inpro and another Swiss company, Luem AG, entered into a contract with the Ministry of Industry and Minerals State Organization for Engineering Industries, State Enterprise for Automotive Industries of Iraq ("SEAI") dated 24 May 1980 (the "Contract") to build an automotive plant located in Iskandariyah, Iraq for bus painting, steel profile preserving, small parts handling and other associated uses (the "Project"). The total price of the Contract was US$6,257,249. Inpro ceased work on the Project on 26 January 1982. The Project was completed and handed over to SEAI in 1985.

417. Inpro seeks compensation in the amount of US$648,921 as contractual debt in relation to unpaid work it performed on the Project. Inpro alleged that SEAI owed Inpro US$317,784 under the contract as well as US$331,137 for work performed under related contracts. Inpro alleged that it finished the project itself after Luem AG became insolvent in 1984.

B. Analysis and valuation

418. Inpro stated that it sought final payment from Iraq for a period of over five years after the work was completed. The Final Acceptance Certificate ("FAC") was never issued because the guarantee period was not satisfactorily completed. As part of its efforts to collect the alleged outstanding amounts, Inpro provided minutes of a meeting held between Inpro and SEAI between 4 and 11 July 1989. These minutes demonstrate that a performance bond in the amount of US$269,600 was collected by SEAI as payment for repairs due to poor quality work. Further, the minutes indicate that the final payment was withheld due to the poor quality of work. Finally, it appears the parties reached a settlement of all obligations due and owing in July 1989.

419. The Panel finds that Inpro completed its performance pursuant to the terms of the Contract in 1982. The debt in question arose nine years prior to 2 August 1990. Under the rule governing compensability, such debt is a debt "arising prior to" 2 August 1990 and is, therefore, not compensable

before this Commission. The settlement agreement reached in 1989 did not give rise to a new obligation.

C. Summary of recommended compensation for Inpro

420. Based on its findings regarding Inpro's claim, the Panel recommends no compensation.

XVI. THE CLAIM OF W.J. WHITE LTD.

421. W.J. White Ltd. ("W.J. White"), a limited company incorporated in the United Kingdom, was a sub-contractor to Interiors International Ltd. who entered into a contract with the Ministry of Housing and Construction in Baghdad to work on Project 304X, later known as Al Sijood Palace in Iraq. W.J. White seeks compensation in the amount of US$183,998 for contract losses and interest thereon.

422. W.J. White seeks compensation in the amount of US$140,191 for the expenses that it incurred in relation to two of its employees who were detained in Iraq, loss of overheads and profit and loss of wages paid to the two employees during the relevant period of detention.

423. W.J. White also seeks compensation for interest in the amount of US$43,807. For the reasons stated in paragraph 37, the Panel does not address the issue of compensability of claims for interest.

A. Payment or relief to others

1. Facts and contentions

424. Two of W.J. White's employees, having completed their work, were due to leave Iraq on 3 August 1990 but were detained by the Iraqi authorities until 6 December and 16 December 1990, respectively. W.J. White alleged that, during their detention, these employees were made to work 12 hours a day on the modifications to the palace that were being carried out by the Iraqis.

425. W.J. White seeks compensation in the amount of US$8,362 as accommodation expenses paid for its employees for 29 days in August and two days in September 1990. W.J. White alleged that, after these dates, the accommodation expenses were paid by the Government of the United Kingdom. W.J. White also seeks compensation in the amount of US$13,403 for expenses incurred on meals and laundry during the detention period in Iraq for the months of August, September, October, November and December 1990.

426. Finally, W.J. White seeks compensation in the amount of US$25,799 for the wages that it paid to the two employees for the months of August, September, October, November and December 1990. W.J. White alleged that during the period of detention of its employees, it paid wages to those employees but did not receive any reimbursement from Iraq for the work performed during this period.

2. Analysis and valuation

427. Because the two employees of W.J. White were illegally detained by the Iraqi authorities, in accordance with paragraph 21(e) of Governing Council decision 7 any payment made or relief provided by W.J. White in connection with the illegal detention of its employees are losses suffered

directly because of Iraq's invasion and occupation of Kuwait. However, W.J. White did not provide any evidence in support of its claim for accommodation, meals and laundry expenses. W.J. White stated that it had no receipts for these expenses because all expenses were paid in cash. The only evidence provided by W.J. White were copies of Iraqi exit visas.

428. The alleged loss incurred by W.J. White with respect to the wages paid to its two employees in Iraq after productive work had ceased and until the employees were repatriated to their home countries is compensable to the extent proven by W.J. White. The only evidence provided by W.J. White are illegible photocopies of the work permits of its two employees supposedly covering the period of their regular work under the project.

429. As proof of such losses, W.J. White had been requested to provide affidavits from its employees describing their detention in Iraq. W.J. White failed to provide these affidavits.

430. W.J. White stated that it no longer has in its possession the files relating to the project. Further, it stated that it no longer has copies of the payroll records of the relevant employees, as it did not keep these beyond the six year minimum retention period required by applicable law.

3. Recommendation for payment or relief to others

431. The Panel recommends no compensation for payment or relief to others.

B. Specially manufactured goods

432. W.J. White seeks compensation in the amount of US$32,631 for loss of profit for specially manufactured goods, specifically ten bedside chests. W.J. White alleged it delivered those chests to its shipper, but the chests were not shipped to Iraq due to Iraq's invasion and occupation of Kuwait.

433. W.J. White submitted photographs of sample bedside chests and unit prices for small and large chests. W.J. White did not submit a copy of the contract for manufacture or other supporting documentation that would allow the Panel to determine the loss of profits based on a calculation of the unit price of the samples less the contract rates or manufacturing costs of the bedside chests. W.J. White provided no other information or supporting documentation for this loss alleged loss.

434. The Panel recommends no compensation for specially manufactured goods.

C. Loss of overheads

435. W.J. White seeks compensation in the amount of US$59,996 for overheads incurred in August, September, October, November and December 1990, allegedly in relation to its two employees who were held in detention and made to work for 12 hours a day.

436. W.J. White did not provide any information or documentation with respect to costs allegedly incurred by it. W.J. White stated that it did not retain internal management reports and budgetary information on completed projects beyond its product warranty period of five years.

437. The Panel recommends no compensation for loss of overheads.

D. Summary of recommended compensation for W.J. White

438. Based on its findings regarding W.J. White's claim, the Panel recommends no compensation.

XVII. SUMMARY OF RECOMMENDED COMPENSATION BY CLAIMANT

439. Based on the foregoing, the Panel recommends the following amounts of compensation for direct losses suffered by the Claimants as a result of Iraq's invasion and occupation of Kuwait:

(a) Šipad Invest OOUR Export Inženjering (Bosnia and Herzegovina): US$212,112;

(b) Bimont d.d. Rijeka (Croatia): US$92,877;

(c) YIT Corporation (Finland): US$180,807;

(d) East Hungarian Water Construction Company (Hungary): US$17,000;

(e) Toshiba Corporation (Japan): US$30,000;

(f) Munir Said Moh'd Dawud Samara (Jordan): nil;

(g) Eben S.A. (Morocco): US$329,714;

(h) Dutch Agro Products B.V. (Netherlands): nil;

(i) EEI Corporation (Philippines): US$52,224;

(j) Gestiones Reunidas de Construcción S.A. (GRECSA) (Spain): nil;

(k) Kvaerner Generator AB (Sweden): nil;

(l) Inpro AG K. Wirth (Switzerland): nil; and

(m) W.J. White Ltd. (United Kingdom): nil.

Geneva, 2 December 1998

(Signed) John A. Tackaberry
Chairman

(Signed) Pierre M. Genton
Commissioner

(Signed) Vinayak P. Pradhan
Commissioner

Annex V

Report and recommendations made by the Panel of Commissioners concerning the sixth instalment of E3 claims*

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* Previously issued as document S/AC.26/1999/3.

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Introduction

1. The Governing Council of the United Nations Compensation Commission (the "Commission") appointed the present Panel of Commissioners (the "Panel"), composed of Messrs. Werner Melis (Chairman), David Mace and Sompong Sucharitkul, at its twenty-second session in October 1996 to review construction and engineering claims filed with the Commission on behalf of corporations and other legal entities in accordance with the relevant Security Council resolutions, the Provisional Rules for Claims Procedure (S/AC.26/1992/10)(the "Rules") and other Governing Council decisions. This report contains the recommendations to the Governing Council by the Panel, pursuant to article 38 (e) of the Rules, concerning eight claims included in the sixth instalment. Each of the claimants seeks compensation for loss, damage or injury allegedly arising out of Iraq's 2 August 1990 invasion and subsequent occupation of Kuwait.

2. The claims submitted to the Panel in this instalment and addressed in this report were selected by the secretariat of the Commission from among the construction and engineering claims (the "E3 Claims") on the basis of criteria established under the Rules. These include the date of filing with the Commission and compliance by claimants with the requirements established for claims submitted by corporations and other legal entities "category 'E' claims").

I. PROCEDURAL HISTORY

A. The nature and purpose of the proceedings

3. The status and functions of a Panel of Commissioners operating within the framework of the Commission are set forth in the report of the Secretary-General pursuant to paragraph 19 of Security Council resolution 687 (1991) dated 2 May 1991 (S/22559). Pursuant to that report, the Commission is a fact-finding body that examines claims, verifies their validity, evaluates losses, recommends compensation, and makes payment of awards.

4. Within the Commission, the Panel has been entrusted with three tasks in its proceedings. First, the Panel determines whether the various types of losses alleged by the claimants are within the jurisdiction of the Commission. Second, the Panel verifies whether the alleged losses are in

principle compensable and had in fact been incurred by a given claimant. Third, the Panel determines whether these compensable losses were incurred in the amounts claimed.

B. The procedural history of the claims in the sixth instalment

5. On 3 August 1998, the Panel issued a procedural order relating to the claims. None of the claims presented complex issues, voluminous documentation or extraordinary losses that would require the Panel to classify any of the claims as unusually large or complex within the meaning of article 38 (d) of the Rules. The Panel thus decided to complete its review of the claims within 180 days of 3 August 1998, pursuant to article 38 (c) of the Rules.

6. The Panel performed a thorough and detailed factual and legal review of the claims. The Panel considered the evidence submitted by claimants in response to requests for information and documents. It also considered Iraq's responses to the factual and legal issues raised in the twenty-first report of the Executive Secretary which was issued on 8 October 1997 in accordance with article 16 of the Rules.

7. After a review of the relevant information and documentation, the Panel made initial determinations as to the compensability of the loss elements of each claim. Pursuant to article 36 of the Rules, the Panel retained as its expert consultants a loss adjusting firm with international and Persian Gulf experience to assist the Panel in the quantification of losses incurred in large construction projects. The Panel then directed the Panel's expert consultants to prepare comprehensive reports on each of the claims, stating their opinions on the appropriate valuation of each of the compensable losses and setting forth the evidence supporting those opinions. The Panel reviewed those reports with the Panel's expert consultants.

8. In drafting this report, the Panel has not included specific citations to restricted or non-public documents that were produced or made available to it for the completion of its work.

C. The claims

9. This report contains the Panel's findings with respect to the following claims:

(a) Voest-Alpine Aktiengesellschaft, a corporation organized under the laws of the Republic of Austria, which seeks compensation in the total amount of 255,203.24 Austrian schillings, or US$23,205 at the applicable rate of exchange, for losses allegedly caused by Iraq's invasion and occupation of Kuwait;

(b) Dredging International N.V., a corporation organized under the laws of the Kingdom of Belgium, which seeks compensation in the total amount of 27,673,214 Belgian francs, or US$861,960 at the applicable rate of exchange, for losses allegedly caused by Iraq's invasion and occupation of Kuwait;

(c) Chemokomplex Contracting & Trading Company, a corporation organized under the laws of the Republic of Hungary, which seeks compensation in the total amount of US$22,012 for losses allegedly caused by Iraq's invasion and occupation of Kuwait;

(d) Butec S.A.L., a corporation organized under the laws of the Lebanese Republic, which seeks compensation in the total amount of US$8,297,782 and 11,375 Iraqi dinars (ID), for the total of US$8,334,278 at the applicable rate of exchange, for losses allegedly caused by Iraq's invasion and occupation of Kuwait;

(e) G.P. "Beton" A.D. - Construction Company, a corporation organized under the laws of the former Yugoslav Republic of Macedonia, which seeks compensation in the total amount of US$3,397,584 for losses allegedly caused by Iraq's invasion and occupation of Kuwait;

(f) Budimex Engineering and Construction Sp. Z.o.o., a corporation organized under the laws of the Republic of Poland, which seeks compensation in the total amount of US$6,018,845 for losses allegedly caused by Iraq's invasion and occupation of Kuwait;

(g) Binec Industri AB, a corporation organized under the laws of the Kingdom of Sweden, which seeks compensation in the total amount of

/...

2,143,874 Swedish kronor, or US$372,395 at the applicable rate of exchange, for losses allegedly caused by Iraq's invasion and occupation of Kuwait; and

(h) Contracts Administration Limited, a corporation organized under the laws of the United Kingdom of Great Britain and Northern Ireland, which seeks compensation in the total amount of US$588,622 for losses allegedly caused by Iraq's invasion and occupation of Kuwait.

II. LEGAL FRAMEWORK

A. Applicable law

10. As set forth in paragraphs 16-18 and 23 of the "Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of 'E3' Claims" (S/AC.26/1988/13)(the "First 'E3' Report"), the Panel determined that paragraph 16 of Security Council resolution 687 (1991) reaffirmed the liability of Iraq and defined the jurisdiction of the Commission. The Panel applied Security Council resolution 687 (1991), other relevant Security Council resolutions, decisions of the Governing Council, and, where necessary, other relevant rules of international law.

B. The "arising prior to" clause

11. The Panel adopted the following interpretation of the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) with respect to contracts to which Iraq was a party:

(a) the phrase "without prejudice to the debts and obligations of Iraq arising prior to 2 August 1990, which will be addressed through normal mechanisms" was intended to have an exclusionary effect on the Commission's jurisdiction, i.e., that such debts and obligations could not be brought before the Commission;

(b) the period described by "arising prior to 2 August 1990" should be interpreted with due consideration to the purpose of the phrase, which was to exclude Iraq's existing bad debts from the Commission's jurisdiction;

(c) the terms "debts" and "obligations" should be given the customary and usual meanings applied to them in ordinary discourse; and

(d) the use of a three month payment delay period to define the jurisdictional period is reasonable and consistent both with the economic reality in Iraq prior to the invasion and with ordinary commercial practices.

12. The Panel finds that a claim relating to a "debt or obligation arising prior to 2 August 1990" means a debt for payment that is based on work performed or services rendered prior to 2 May 1990.

C. Application of the "direct loss" requirement

13. The Governing Council's decision 7 (S/AC.26/1991/7/Rev.1), decision 9 (S/AC.26/1992/9) and decision 15 (S/AC.26/1992/15) provide specific instructions to the Panel regarding the interpretation of the "direct loss" requirement. Applying these decisions, the Panel examined the loss types presented in the claims to determine whether, with respect to each loss element, the requisite causal link - a "direct loss" - was present.

14. The Panel made the following findings regarding the meaning of "direct loss":

(a) with respect to physical assets in Iraq and in Kuwait on 2 August 1990, a claimant can prove a direct loss by demonstrating that the breakdown in civil order in Iraq or Kuwait, which resulted from Iraq's invasion and occupation of Kuwait, caused the claimant to evacuate its employees and that the evacuation resulted in the abandonment of the claimant's physical assets;

(b) with respect to losses relating to contracts to which Iraq was a party, Iraq may not rely on force majeure or similar legal principles as a defense to its obligations under the contract;

(c) with respect to losses relating to contracts to which Iraq was not a party, a claimant may prove a direct loss if it can establish that Iraq's invasion and occupation of Kuwait or the breakdown in civil order in Iraq or Kuwait following the invasion caused the claimant to evacuate the personnel needed to perform the contract;

(d) costs incurred in taking reasonable steps to mitigate the losses incurred by the claimant are direct losses, bearing in mind that the claimant was under a duty to mitigate any losses that could reasonably be avoided after the evacuation of its personnel from Iraq; and

(e) the loss of use of funds on deposit in Iraqi banks is not a direct loss unless the claimant can demonstrate that Iraq was under a contractual or other specific duty to exchange those funds for convertible currencies and to authorize the transfer of the converted funds out of Iraq and that this exchange and transfer was prevented by Iraq's invasion and occupation of Kuwait.

D. Liability of Iraq

15. "Iraq" as used in decision 9 means the Government of Iraq, its political subdivisions, or any agency, ministry, instrumentality or entity (notably public sector enterprises) controlled by the Government of Iraq. At the time of Iraq's invasion and occupation of Kuwait, the Government of Iraq regulated all aspects of economic life other than some peripheral agriculture, services and trade. (See Iraq Country Profile 1990-91, The Economist Intelligence Unit, London, 1990, p. 10.)

E. Date of loss

16. The Panel must determine "the date the loss occurred" within the meaning of Governing Council decision 16 (S/AC.26/1992/16) for the purpose of recommending compensation for interest and for the purpose of determining the appropriate exchange rate to be applied to losses stated in currencies other than in United States dollars.

17. With respect to the seven claims that are the subject of this report, the Panel finds that the losses occurred during the period of Iraq's occupation of Kuwait, from 2 August 1990 to 2 March 1991. It is impractical for the Panel to determine with precision the date of each individual loss that underlies the claim at issue. Accordingly, the Panel uses 2 August 1990 as the date of loss, unless otherwise established, for the claims included in this report.

F. Interest

18. On the issue of the appropriate interest rate to be applied, the relevant Governing Council decision is decision 16. According to that decision, "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award." In decision 16 the Governing Council further specified that "[i]nterest will be paid after the principal amount of awards," while postponing decision on the methods of calculation and payment of interest.

19. The Panel finds that interest shall run from the date of loss, or, unless otherwise established, from 2 August 1990.

G. Currency exchange rate

20. While many of the costs incurred by the claimants were denominated in currencies other than United States dollars, the Commission issues its awards in that currency. Therefore the Panel is required to determine the appropriate rate of exchange to apply to losses expressed in other currencies.

21. The Panel finds that the exchange rate set forth in the contract is the appropriate rate for losses under the relevant contracts because this was specifically bargained for and agreed to by the parties.

22. For non-contractual losses, the Panel finds the appropriate exchange rate to be the prevailing commercial rate, as evidenced by the United Nations Monthly Bulletin of Statistics on the date of loss, or, unless otherwise established, on 2 August 1990.

H. Evacuation losses

23. In accordance with paragraph 21 (b) of decision 7 of the Governing Council, the Panel finds that the costs associated with evacuating and repatriating employees from Iraq between 2 August 1990 and 2 March 1991 are compensable to the extent that such costs are proven by the claimant. Compensable costs consist of temporary and extraordinary expenses relating to evacuation and repatriation, including transportation, food and accommodation.

I. Valuation

24. The Panel developed, with the assistance of the secretariat and the Panel's expert consultants, a verification program that addresses each loss item. The valuation analysis used by the Panel's expert consultants ensures clarity and consistency in the application of certain valuation principles to the construction and engineering claims.

25. After receipt of all claim information and evidence, the Panel's expert consultants applied the verification program. Each loss element was analysed individually according to a set of instructions established by the Panel. The expert consultants' analysis resulted in a recommendation of compensation in the amount claimed, an adjustment to the amount claimed, or a rejection of the amount claimed for each loss element. In those instances where the Panel's expert consultants were unable to respond decisively, the issue was brought to the attention of the Panel for further discussion and development.

26. For tangible property losses, the Panel adopted historical cost minus depreciation as its primary valuation method.

27. Additionally, the Panel's expert consultants verified all calculations in a claim, including all calculations within a statement of claim and the evidence submitted.

28. At Panel meetings, the Panel's expert consultants presented to the Panel claim-specific reports. These reports include, but are not limited to:

(a) the claimant's name and identifying claim number;

(b) a table detailing the amount claimed and the amount for reclassified losses in United States dollars (or other currency shown on the claim form) by loss element and total;

(c) a brief description of the nature of the claimant's business and the project for which the claimant performed work, if any;

(d) the date that the claimant ceased work and the date that the claimant recommenced work, if known;

(e) an analysis of the evidence submitted and the basis of the valuation recommendation for each loss element; and

(f) a recommendation of compensation, if any, by category of loss and total for all categories, with explanatory comments.

J. Evidentiary requirements

29. Pursuant to article 35 (3) of the Rules, corporate claims must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and amount of the claimed loss. The Governing Council has made it clear in paragraph 5 of decision 15 that, with respect to business losses, there "will be a need for detailed factual descriptions of the circumstances of the claimed loss, damage or injury" in order to recommend compensation.

30. The category "E" claim form requires all corporations and other legal entities that have filed claims to submit with their claim form "a separate statement explaining its claim ('Statement of Claim'), supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and the amount of the claimed loss". In addition, claimants were instructed to include with the statement of claim the following particulars:

> "(a) The date, type and basis of the Commission's jurisdiction for each element of loss ...;
>
> (b) The facts supporting the claim;
>
> (c) The legal basis for each element of the claim;
>
> (d) The amount of compensation sought, and an explanation of how this amount was arrived at."

31. In those cases where the original submission of the claim inadequately supported the alleged loss, the secretariat prepared and issued a written communication to the claimant pursuant to the Rules requesting specific information and documentation regarding the loss ("claim development letter"). In reviewing the subsequent submissions, the

Panel noted that in many cases the claimant still did not provide sufficient evidence to support its alleged losses.

32. The Panel is required to determine whether these claims are supported by sufficient evidence and, for those that are so supported, must recommend the appropriate amount of compensation for each compensable claim element. This requires the application of relevant principles of the Commission's rules on evidence and an assessment of the loss elements according to these principles. The recommendations of the Panel are set forth below.

III. VOEST-ALPINE AKTIENGESELLSCHAFT MBH

33. Voest-Alpine Aktiengesellschaft ("Voest-Alpine"), an Austrian corporation, seeks compensation in the amount of US$23,205 for losses related to bank guarantee commissions from 27 August 1991 to 28 February 1993, and, in addition, commissions accruing at a rate of US$1,289 a month thereafter.

Table 1. Voest-Alpine's claim

Claim element	Claim amount (US$)
Bank guarantee commissions from 27 August 1991 to 28 February 1993	23,205
Bank guarantee commissions from 1 March 1993 onwards (US$1,289 per month)	..
Total	..

A. Facts and contentions

34. Voest-Alpine entered into a contract in April 1981 with the State Organization for Iraqi Ports (the "Employer") for the supply and erection of a conveyor belt system with a ship loader in the Basrah harbour. Voest-Alpine stated that during the war between Iran and Iraq the shiploader system was damaged. A dispute arose between Voest-Alpine and the Employer over which party was to remedy the damage.

35. On 30 January 1990, Voest-Alpine and the Employer reached a settlement agreement whereby Voest-Alpine agreed to provide an electrical engineer to the Employer for a period of 12 months to provide technical assistance during the repair of the ship loader (the "Settlement Agreement"). The Employer agreed to release the bank guarantee issued by the Rafidain Bank as well as the counter guarantee issued by the Bank für Oberösterreich und Salzburg at the end of the 12 month period.

36. Voest-Alpine stated that the engineer started work at the site on 27 July 1990, but the work terminated due to Iraq's invasion of Kuwait. The engineer returned to Austria on 27 August 1990.

37. Voest-Alpine submitted a copy of a letter dated 20 November 1990 from the General Establishment of Iraqi Ports which confirmed that the engineer left the site on 26 August 1990 and requested a replacement engineer.

38. Voest-Alpine stated that if Iraq had not invaded Kuwait then Voest-Alpine would have fulfilled its obligations pursuant to the terms of the Settlement Agreement, requiring the Employer to release the bank guarantees by 27 August 1991. Voest-Alpine contends that its damage consists of costs for the maintenance of the bank guarantee from 27 August 1991.

B. Analysis and valuation

39. Voest-Alpine provided copies of the Settlement Agreement, the letter requesting the replacement engineer, and a letter from the Bank für Oberösterreich und Salzburg dated 10 March 1993, stating the costs incurred for the bank guarantees.

40. In its First "E3" Report, the Panel found that commissions paid on bank guarantees are compensable as long as the interruption of the related performance was the direct result of Iraq's invasion of Kuwait.

41. The Panel reviewed the Settlement Agreement and finds that such agreement is a new contract unrelated to the obligations of the parties under the original construction contract. Further, the Panel finds that Voest-Alpine recalled its engineer from Iraq due to Iraq's invasion and occupation of Kuwait. Accordingly, the bank guarantee commissions are compensable in the amount of US$23,205 for the period 27 August 1991 to 28 February 1993 and in the amount of US$16,757 for the period 1 March 1993 until the filing date of Voest-Alpine's claim. In this instance, the filing receipt date was 31 March 1994.

C. Recommendation for Voest-Alpine

Table 2. Recommended compensation for Voest-Alpine's claim

Claim element	Claim amount (US$)	Recommended compensation (US$)
Bank guarantee commissions from 27 August 1991 until 28 February 1993	23,205	23,205
Bank guarantee commissions from 1 March 1993 to 31 March 1994	..	16,757
Total	..	39,962

42. Based on its findings regarding Voest-Alpine's claim, the Panel recommends compensation in the amount of US$39,962.

IV. DREDGING INTERNATIONAL N.V

43. Dredging International N.V. ("Dredging International"), a Belgian company, seeks compensation in the amount of US$861,960 for losses relating to insurance premiums, unproductive labour costs and evacuation costs.

Table 3. Dredging International's claim

Claim element	Claim amount (US$)
Insurance premiums	181,403
Unproductive labour	571,555
Payment or relief to others	109,002
Total	861,960

A. Insurance premiums

1. Facts and contentions

44. On 28 October 1989, the General Establishment of Iraqi Ports, Ministry of Transport and Communication, entered into a contract with a joint venture consisting of Boskalis International B.V. and Volker Stevin Dredging B.V. for dredging works in Umm Qasr, Iraq. Dredging International entered into the Agreement of Hire of Dredging Equipment with Volker Stevin Dredging B.V. on 5 January 1990.

45. Dredging International seeks compensation in the amount of US$181,403 for war risk insurance premiums for its dredger the "Mascaret" and its ship the "Ruebens", incurred because of Iraq's invasion of Kuwait. The dredger Mascaret commenced work in Iraq on 25 March 1990. The ship Ruebens was located in Abu Dhabi, United Arab Emirates, at the time of Iraq's invasion of Kuwait. In its claim, Dredging International also included US$860 for "legal advice" and US$7,787 for "administration costs" such as files, correspondence, meetings and phone calls. Dredging International received insurance payments in the amount of US$983 and US$210,256 with respect to losses incurred for the Ruebens.

2. Analysis and valuation

46. Pursuant to the Agreement of Hire of Dredging Equipment, Volker Stevin Dredging B.V. was required to insure the Mascaret. Dredging

International had no responsibility to insure the Mascaret and did not demonstrate that it did so. Furthermore, Dredging International received payment for a loss with respect to the Ruebens. The Panel finds that Dredging International failed to demonstrate that it incurred any loss with respect to payment of premiums for war risk insurance.

47. A recommendation on the claim for legal fees and administration costs normally would be deferred. In a letter dated 6 May 1998, the Executive Secretary requested the panels of Commissioners not to make a decision on the compensability of claim preparation costs because the Governing Council intends to resolve the issue of claims preparation costs in the future. However, the Panel recommends no compensation for legal fees and administration costs incurred by Dredging International as the underlying claim for insurance premiums is not compensable.

3. Recommendation

48. The Panel recommends no compensation for insurance premiums.

B. Unproductive labour costs

49. Dredging International seeks compensation in the amount of US$571,555 for losses relating to "additional labour costs" of 14 employees who worked in Iraq until their departure on 2 December 1990 and for administration costs.

50. Dredging International stated that work was completed by 16 September 1990. Dredging International stated that it incurred additional labour costs in the amount of US$551,309 outside the scope of the work cycle because these employees were unable to leave Iraq after Iraq's invasion of Kuwait.

51. In its First "E3" Report, the Panel found it reasonable to conclude that a decline in productivity is a direct result of the invasion. The Panel finds that Dredging International provided satisfactory evidence of the unproductive labour costs of its 14 employees. However, the Panel finds that Dredging International overstated the work periods for two of its employees, requiring a reduction in the amount of US$18,549 from the total loss amount. The Panel finds that Dredging International submitted

sufficient evidence to support its additional labour costs in the amount of US$532,760.

52. Dredging International also seeks compensation for administrative costs in the amount of US$20,246 as part of its claim for additional labour costs. The Panel finds that Dredging International did not submit sufficient evidence in support of its administrative costs.

53. The Panel recommends compensation in the amount of US$532,760 for unproductive labour costs.

C. Payment or relief to others

54. Dredging International seeks compensation in the amount of US$109,002 for losses relating to evacuation costs of its employees. Dredging International included the costs of a "welcome home party" (US$55,678), commemorative works of art (US$26,008), airfare from Zurich to Brussels for five people (US$2,773), and other administrative costs for the repatriation of 14 employees (US$24,543).

55. The Panel finds that all costs related to the "welcome home party", including the commemorative works of art commissioned by Dredging International to acknowledge the return of its employees, are not losses directly related to Iraq's invasion and occupation of Kuwait.

56. The Panel finds that only the cost of the airfare from Zurich to Brussels for Dredging International's two employees is compensable. Dredging International submitted sufficient evidence of the payment in the amount of US$739 for the airfare for those two employees. All other items included in the claim for evacuation costs are not recommended for compensation because such costs are not directly related to Iraq's invasion of Kuwait.

57. The Panel recommends compensation in the amount of US$739 for payment or relief to others.

D. Recommendation for Dredging International

Table 4. Recommended compensation for Dredging International

Claim element	Claim amount (US$)	Recommended compensation (US$)
Insurance premiums	181,403	nil
Unproductive labour	571,555	532,760
Payment or relief to others	109,002	739
Total	861,960	533,499

58. Based on its findings regarding Dredging International's claim, the Panel recommends compensation in the amount of US$533,499.

V. CHEMOKOMPLEX CONTRACTING AND TRADING COMPANY

59. Chemokomplex Contracting and Trading Company ("Chemokomplex"), a Hungarian company, is seeking compensation in the amount of US$22,012 for loss and destruction of tangible assets that were located in Kuwait prior to the invasion by Iraq.

A. Facts and contentions

60. Chemokomplex states that it is the legal successor to Chemokomplex Hungarian Trading Company of Machines and Equipment for the Chemical Industry (the "Predecessor Company"), a company registered with the Metropolitan Court in Budapest, Hungary, for an indefinite term. Chemokomplex states that it inherited the assets relating to foreign trade of the Predecessor Company and it is, therefore, entitled to file a claim for compensation for the losses suffered by the Predecessor Company. The Panel finds that Chemokomplex can properly bring this claim before the Commission.

61. Chemokomplex stated that it lost office equipment and two cars because of Iraq's invasion of Kuwait.

B. Analysis and valuation

62. Chemokomplex did not submit sufficient evidence regarding the loss of the two cars. It provided the registration number for one car and the motor and chassis number for the second car. Chemokomplex did not provide information with respect to the age or acquisition costs of the vehicles.

63. In support of the claim for loss and destruction of the office equipment, Chemokomplex submitted two corresponding inventory lists, one dated 30 September 1989 and one dated 30 September 1991. Neither list establishes ownership, age, cost or presence of the equipment in Kuwait.

64. Chemokomplex did not reply to the claim development letters sent to it by the secretariat. Therefore, the Panel reviewed the claim as originally submitted. The Panel finds that Chemokomplex did not submit sufficient evidence to support its stated loss of tangible property.

C. Recommendation for Chemokomplex

65. Based on its findings regarding Chemokomplex's claim, the Panel recommends no compensation.

VI. BUTEC S.A.L

66. Butec S.A.L. ("Butec"), a Lebanese company, seeks compensation in the amount of US$8,334,278 for contract losses, tangible property losses and evacuation costs.

Table 5. Butec's claim

Claim element	Claim amount (US$)
Contract losses	
Gas compression station contract	5,282,292
Cable factory contract	2,897,486
Tangible property losses	54,500
Demobilization costs	100,000
Total	8,334,278

A. Contract losses

1. Gas compression station

(a) Facts and contentions

67. Butec signed a contract on 30 November 1989 with the State Establishment of Pipelines of Iraq (the "Employer") to complete the inlet and outlet gas compression station of a petrochemical plant in Basra, Iraq. The total value of the contract was US$11,434,084. Butec seeks compensation in the amount of US$5,282,292 for contract losses related to the gas compression station.

68. The scope of Butec's work included the design and supply of all materials, apparatus, equipment and spare parts needed for the completion of the gas compression station. Pursuant to the terms of the contract, manufacturing was to commence in February 1990, and delivery of the equipment was to start in July 1990 and finish in October 1990.

69. Butec stated that the design work was completed and submitted to the Employer in May 1990. For the unpaid portion of the design works, Butec seeks compensation in the amount US$472,567.

70. With respect to material and equipment, Butec seeks compensation in the amount of US$4,809,725. Butec stated that all material had been ordered but only a small portion of the material had reached Iraq before the invasion of Kuwait. Further, Butec stated that material and equipment that was in transit to Iraq was rerouted to other destinations because of the trade embargo. The balance of equipment was either at an advanced stage of manufacture or was ready for shipment. Butec stated that completion of the project was frustrated because of Iraq's invasion of Kuwait.

71. Butec stated that after the invasion of Kuwait by Iraq, it requested the Employer to terminate the contract. In a telex dated 3 September 1990, the Employer refused to terminate the contract and requested Butec to continue performance.

(b) Analysis and valuation

72. The Panel finds that Butec did not submit sufficient evidence to demonstrate its contract losses.

73. With respect to the design work, Butec stated it completed the performance and delivered the designs to the Employer in May 1990. Butec did not submit documents that would indicate to the Panel the dates of performance, the hourly charges, or the terms of payment. Because Butec did not submit documents that would identify the date on which the design work was performed, the Panel draws the inference from the correspondence between Butec and the Employer that the work for the design was performed prior to 2 May 1990. The Panel finds that the loss is a debt of Iraq that arose prior to the invasion.

74. With respect to the materials and equipment, the Panel finds that Butec delivered to the Employer less than 4 per cent of the value of the material and equipment ordered pursuant to the contract. Although Butec submitted a telex message dated 24 August 1990 sent to the Employer in which Butec detailed the delivery status of the material and equipment, Butec did not submit any other evidence that Butec had in fact paid its suppliers for the material and equipment. Further, the Panel finds that Butec received payment for the 4 per cent of the material and equipment delivered to the Employer.

75. Additionally, Butec stated that the material and equipment in transit was rerouted to other destinations because of the trade embargo. Butec did not state that the invasion of Kuwait was a separate and distinct cause of its losses related to material and equipment in transit. After rerouting the material and equipment in transit because of the trade embargo, Butec proceeded with the contract at its own risk.

76. Even assuming that the invasion of Kuwait and the trade embargo were parallel causes of Butec's stated losses, Butec failed to take steps to mitigate its losses. Butec submitted documents which indicate that at least one supplier did not deliver the ordered equipment and that the supplier offered to resell the equipment to reduce Butec's overall liability. For Butec, the refusal to take steps to reduce its overall exposure was an economic decision whose consequences were not a direct result of Iraq's invasion and occupation of Kuwait.

77. The Panel finds that the amounts paid to Butec by the Employer with respect to the delivered material and equipment exceeded the amounts Butec stated are due and owing. Further, the Panel finds that Butec did not submit sufficient evidence to demonstrate that its losses incurred under the gas compression station contract were the direct result of Iraq's invasion and occupation of Kuwait.

(c) Recommendation

78. The Panel recommends no compensation for contract losses related to the gas compression station.

2. Cable factory

(a) Facts and contentions

79. Butec signed a contract with UR General Establishment for Engineering Industries (the "Employer") on 2 April 1989 to build a cable factory in Naissiriyah, Iraq. Butec was to design the civil works, supply the equipment and material for the utilities, erect the utilities and execute the related civil works. The total value of the contract was over US$10,600,000.

80. Butec stated that by July 1990 it was performing its obligations under the contract and that it had already finished the design drawings. Butec seeks compensation in the amount of US$625,970 for the cost of the design of the civil works and utilities. Butec also seeks compensation for expenses related to overhead, mobilization, salaries of personnel allocated to project management, and financial costs in the amount of US$775,000.

81. Butec seeks compensation in the amount of US$2,257,000 for loss of profits on the cable factory project.

82. From the total contract loss in the amount of US$3,657,970, Butec has deducted the advance in the amount of US$760,484 received from its Employer, and seeks compensation in the amount of US$2,897,486 for contract losses related to the cable factory.

(b) Analysis and valuation

83. Pursuant to the terms of the contract, the cost of the design works was not directly recoverable from the Employer. The Bills of Quantity specified that the design work was free of charge. The Panel finds that the design work was part of the overheads that were included in the pricing of the items included in the Bill of Quantity.

84. With respect to the overheads, mobilization costs, salaries, and financial costs, the Panel finds that these costs are not normally chargeable to the Employer, but are costs that are part of the pricing of the contract.

85. Finally, the Panel finds that Butec did not submit sufficient evidence to support its claim for loss of profits on the cable factory project. In order to recommend compensation for loss of profits, the Panel requires clear and convincing evidence of ongoing and expected profitability. In support of its allegation for loss of profits, Butec submitted a 1990 cash flow statement of uncertain origin. Butec did not provide clear and convincing evidence of its projected or actual revenues or costs for the cable factory or similar projects.

(c) Recommendation

86. The Panel recommends no compensation for contract losses related to the cable factory.

B. Loss of tangible property

87. Butec seeks compensation in the amount of US$54,500 for office equipment confiscated by the Iraqi authorities from its office in Iraq. The property listed consists mostly of computers and office furniture. Butec provided letters from the Iraqi authorities dated 1993 which indicate that the equipment was in the possession of the "Manufacturing Military Committee, Fao General Establishment Companies Department".

88. Butec stated that it did not have evidence of the specific tangible property lost or damaged as a direct result of Iraq's invasion and occupation of Kuwait. Butec did not demonstrate its ownership, the age or value of the office equipment, only that the office equipment is in the possession of an Iraqi governmental agency. Further, Butec did not demonstrate that such office equipment was irretrievably lost or damaged. The Panel finds that Butec did not submit sufficient evidence to support its tangible property loss.

89. The Panel recommends no compensation for loss of tangible property.

C. Demobilization

90. Butec seeks compensation in the amount of US$100,000 for demobilization costs. Butec stated that three months after the invasion of Kuwait by Iraq, Butec considered the contracts frustrated and demobilized its workforce despite its willingness to resume the work.

91. The Panel finds that Butec did not provide sufficient information or evidence of demobilization costs. In support of its loss, Butec only submitted a cash flow statement for a related entity. The cash flow statement does not demonstrate the payment of expenses incurred for demobilization costs by the related entity or by Butec.

92. The Panel recommends no compensation for demobilization costs.

/...

D. Recommendation for Butec

Table 6. Recommended compensation for Butec's claim

Claim element	Claim amount (US$)	Recommended compensation (US$)
Contract losses		
Gas compression station contract	5,282,292	nil
Cable factory contract	2,897,486	nil
Tangible property losses	54,500	nil
Demobilization costs	100,000	nil
Total	8,334,278	nil

93. Based on its findings regarding Butec's claim, the Panel recommends no compensation for Butec.

VII. G.P. "BETON" A.D. CONSTRUCTION COMPANY

94. G.P. "Beton" A.D. Construction Company ("Beton"), a company registered with the District Economic Court in Skopje, Macedonia, seeks compensation in the amount of US$3,397,584 for contract losses relating to services it provided as a sub-contractor during the construction of the Oil Complex Project in Baghdad (the "Project").

A. Facts and contentions

95. Beton was a sub-contractor of Ingra Engineering and Construction Company ("Ingra"). Ingra entered into a contract dated 1 January 1981 with the Minister of Housing and Construction for the Republic of Iraq. Beton concluded its work on the Project in 1989 and the certificate of completion of the works was signed and issued on 15 June 1989.

96. On 17 April 1992, Beton, the Ministry of Economy of the Republic of Macedonia and Ingra entered into an agreement with Gulf Enterprises Inc. ("Gulf"), whereby Beton and Ingra authorized Gulf to collect amounts due for the Project. Although the agreement specifies the amounts due both to Beton and Ingra individually, the agreement authorizes Gulf to collect the entire amount due in respect of the work performed on the Project. In its reply to the claim development letter, Beton explained that the agreement that authorized Gulf to collect the amounts owed on the Project was valid only for a period of one year and was not extended.

B. Analysis and valuation

97. The Panel finds that the contract losses were for work performed prior to 2 May 1990. The loss is characterized as a debt of Iraq that arose prior to Iraq's invasion of Kuwait. Because the stated loss is outside the jurisdiction of the Commission, the Panel does not reach the issue of the standing of Beton to file its own claim in the light of its agreement with Gulf.

C. Recommendation for Beton

98. Based on its findings regarding Beton's claim, the Panel recommends no compensation.

/...

VIII. BUDIMEX ENGINEERING AND CONSTRUCTION SP. Z.O.O

99. Budimex Engineering and Construction Sp. Z.o.o. ("Budimex"), a Polish company, seeks compensation in the amount of US$6,018,845 for contract losses, loss of profits, evacuation costs, claim preparation costs, and interest incurred with respect to seven contracts with Iraq.

100. Budimex stated that for more than 20 years it was doing business in Iraq in the field of civil engineering works as well as providing the services of its technical specialists to Iraqi state companies and agencies.

Table 7. Budimex's claim

Claim element	Claim amount (US$)
Contract losses	703,677
Loss of profits	4,736,346
Evacuation costs	101,197
Claim preparation costs	477,625
Total	6,018,845

A. Contract losses

1. Facts and contentions

101. Budimex seeks compensation in the amount of US$703,677 for the United States dollar portion of unpaid work identified in invoices issued under four of the contracts with Iraq. Budimex stated that all of the invoices submitted pursuant to the contracts were for work performed after 2 May 1990.

102. Budimex acknowledged that the portions of the invoices payable in Iraqi dinars have all been paid. Budimex stated that this indicates the respective employers' acceptance of the work performed. Additionally, Budimex submitted transfer orders addressed to the relevant Iraqi banks, requesting payment of the amounts due in United States dollars. Budimex also received an advance payment in both Iraqi dinars and United States dollars from the respective employers. Finally, Budimex provided a letter dated 5 November 1990 that it sent to the Technical Corps for Special

Projects listing the amounts that remained unpaid. Budimex attached the respective employers' replies, confirming the amounts due and owing.

2. Analysis and valuation

103. The Panel finds that Budimex submitted sufficient evidence of its contract losses. For each of the contracts, Budimex submitted copies of invoices with the corresponding timesheets which demonstrate that all work included in each invoice was performed after 2 May 1990. Each invoice had been approved for payment by the employer's representative. With each invoice Budimex also submitted the respective transfer orders for payment by the respective employers.

104. For each of the contracts at issue in this claim, the Panel finds that Budimex has submitted sufficient evidence of its losses. The Panel adopts the calculations of its experts to arrive at the recommended compensation before deduction of the advance payments made by each employer as set forth in the following table.

Table 8. Budimex contracts

Contract	Amount claimed (US$)	Recommended compensation before advance (US$)
SEIS steel plant	209,464	20,054
Petro-chemical complex No. 2	284,128	284,128
Project 65	190,556	185,468
SEIS Ashtar 1989	19,529	19,529
Total	703,677	509,179

105. The employers on the SEIS steel plant, Project 65 and SEIS Ashtar 1989 contracts paid an advance to Budimex under the terms of their respective contracts. Budimex confirmed that it had not repaid the advances to the employers. For each of these contracts, the Panel finds that the advances paid by the employer should be deducted from the recommended compensation amounts set forth in Table 8. The advance amounts to be deducted and the revised recommended compensation amounts are as follows:

(a) after deducting the advance in the amount of US$45,000 received for the SEIS steel plant from the recommended compensation in the amount of US$20,054, the net recommended compensation for this contract is nil;

(b) after deducting the advance in the amount of US$48,000 received for Project 65 from the recommended compensation in the amount of US$185,468, the net recommended compensation is US$137,468; and

(c) after deducting the advance in the amount of US$35,000 received for SEIS Ashtar 1989 from the recommended compensation in the amount of US$19,529, the net recommended compensation is nil.

106. Based on the findings above, the Panel recommends compensation in the amount of US$284,128 for the Petrochemical complex No. 2 and US$137,468 for Project 65 for a total sum of US$421,596.

3. Recommendation

107. The Panel recommends compensation in the amount of US$421,596 for contract losses.

B. Loss of profits

1. Facts and contentions

108. Budimex seeks compensation in the amount of US$4,736,346 for loss of profits during the period from the date of suspension of each of the seven contracts in question until 2 March 1991 and for employment and business operation costs that Budimex incurred during the same period.

109. Budimex stated that it could not avoid or otherwise reduce its normal employment costs and overall business operation costs because it was not in a position to redeploy its technical specialists to other contracts. Consequently, Budimex contends that it had to bear those costs without achieving expected earnings.

2. Analysis and valuation

110. Budimex adopted two methods of calculating its losses. If the contract in question provided for an estimated total contract price, such

price was divided over the total duration of the contract and multiplied by the number of months between the date of the suspension of the contract and 2 March 1991. If the contract in question did not provide for an estimated total contract price, but stipulated the number of personnel to be provided and their wages, the loss was calculated by multiplying the total number of work hours between the date of suspension of the contract and 2 March 1991 by the wages in question.

111. The claim for loss of profits was presented on the basis that all persons engaged to perform work on the contracts were employed at the time of the invasion, that their employment was continuous until at least 2 March 1991, that the full costs of their employment while working in Iraq continued to be paid until 2 March 1991 (notwithstanding that they had returned to Poland or in some cases may not even have gone to Iraq) and that all such persons were not engaged in any other work whatsoever until 2 March 1991.

112. Although Budimex submitted the contracts and invoices related to the various projects, Budimex's allegation that it would have earned a profit is unsupported as no financial statements, management reports, budgets, accounts or progress reports were provided. Budimex did not provide a breakdown of its anticipated revenues or costs, whether actual or projected. Because the Panel requires clear and convincing evidence to demonstrate loss of profits, the Panel finds that Budimex did not submit sufficient evidence to demonstrate such loss.

3. Recommendation

113. The Panel recommends no compensation for loss of profits.

C. Evacuation costs

1. Facts and contentions

114. Budimex seeks compensation in the amount of US$101,197 for costs incurred in the evacuation of its employees from Iraq between August 1990 and November 1990. According to Budimex, the costs included expenses typically associated with evacuations, such as lodging, meals and travel. Although its statement of claim specified that approximately 147 employees

were evacuated, the documents submitted by Budimex indicate that there were actually 149 employees evacuated.

115. Budimex stated that the Polish Ministry of Foreign Economic Cooperation (the "Ministry") and the employees themselves initially bore some of the costs of the evacuations, but that these costs were later reimbursed by Budimex.

2. Analysis and valuation

116. The Panel finds that under the terms of each of the contracts, each employer was required to pay the costs of repatriation of Budimex employees. Payment of the evacuation costs by Budimex was outside the terms of the contract. The Panel finds that the cost incurred by Budimex to evacuate its employees was an extraordinary cost that was the direct result of Iraq's invasion of Kuwait.

117. The Panel finds that Budimex submitted sufficient evidence of the evacuation of 131 of its employees. The documents submitted by both Budimex and the Ministry demonstrate that Budimex paid the Ministry an amount of US$93,402 for the evacuation of 125 Budimex employees. Further, Budimex submitted evidence of the reimbursement of US$4,482 for evacuation costs relating to six employees who had individually paid their own evacuation costs. However, Budimex did not submit sufficient evidence for the remaining 18 employees who were evacuated by the Ministry. For these 18 employees, Budimex submitted evidence of a demand for payment from the Ministry, but it did not submit evidence of such payment.

3. Recommendation

118. The Panel recommends compensation in the amount of US$97,884 for evacuation costs.

D. Claim preparation costs

119. Budimex seeks compensation in the amount of US$477,625 for legal fees incurred in the preparation of its claim. Of the total amount claimed, US$31,250 is in the form of a fixed fee. The remaining amount is contingent upon the success of the claim and is expressed as a percentage

of the demand. Budimex submitted a copy of the contract with its lawyers which confirms the fees in question.

120. The Executive Secretary of the Commission has directed the panels of Commissioners not to consider claim preparation costs at this time because the Governing Council intends to resolve the issue of claim preparation costs in the future. Therefore, the Panel makes no recommendation for claim preparation costs.

E. Recommendation for Budimex

Table 9. Recommended compensation for Budimex's claim

Claim element	Claim amount (US$)	Recommended compensation (US$)
Contract losses	703,677	421,596
Loss of profits	4,736,346	nil
Evacuation costs	101,197	97,884
Claim preparation costs	477,625	nil
Total	6,018,845	519,480

121. Based on its findings regarding Budimex's claim, the Panel recommends compensation in the amount of US$519,480 for Budimex.

IX. BINEC INDUSTRI AB

122. Binec Industri AB ("Binec"), a Swedish corporation, seeks compensation in the amount of US$372,395 for contract losses, bank guarantee costs and interest. Binec manufactures and assembles specialty steel works.

Table 10. Binec's claim

Claim element	Claim amount (US$)
Contract losses	345,870
Bank guarantee commissions	26,525
Total	372,395

A. Contract losses

1. Facts and contentions

123. In January 1990, Binec signed a purchase agreement with the International Contractor's Group S.A.K. (the "Purchaser") for the manufacture, delivery, and assembly of a steel antenna mast for the New Telecommunications Center and New Antenna Tower Project in Kuwait. The Purchaser was a partner in a consortium (ICG/SOGEA S.A. Consortium Joint Venture) that entered into a contract with the Government of Kuwait, Ministry of Public Works (the "Employer").

124. The purchase agreement is a fixed price agreement for the manufacture, delivery and assembly of the antenna, subject to amendment if extra quantities of steel are used. In a letter dated 22 January 1990, Binec revised the contract price and the time schedule for delivery that was stated in the purchase agreement. The letter stated that the antenna was to be delivered on site between 17 September 1990 and 29 September 1990. The Purchaser signed and stamped the letter on 31 January 1990 to indicate its agreement.

125. Binec commenced production of the antenna in April 1990, but considered delivery of the antenna impossible due to Iraq's invasion of Kuwait. Binec stored the antenna in a warehouse in Lulea, Sweden. After deducting an advance payment in the amount of US$165,555, Binec seeks compensation in the amount of US$345,870 for contract losses.

126. As a part of its contract losses, Binec also seeks compensation for costs incurred in respect of "stoppage of project". In this portion of its claim, Binec included losses related to surplus manpower costs, cancellation of sub-contracts, transportation costs of the antenna and "capitalization" expenses.

127. Binec stated that both parties were of the opinion that the value of the components already completed was less than the advance payment Binec had received. Binec contends that, when it restarted production in the spring of 1994, the components of the antenna had to be reproduced because of damage suffered during storage.

2. Analysis and valuation

128. Although it provided copies of the purchase agreement and appendices, Binec did not provide copies of applications for payment, payment certificates, progress reports, invoices and actual payments received. Even so, the Panel finds that both Binec and the Purchaser agreed that Binec had been overpaid for the production costs completed at the time of the invasion.

129. The Purchaser submitted its own claim to the Commission. In that claim, the Purchaser stated that it resumed activities in Kuwait in 1992. On 26 August 1993, the Purchaser stated that it signed a new contract with the Employer to complete the telecommunications tower project. Binec did not disclose whether it participated in the new contract.

130. The Panel finds that the advance payment covered the cost of the components already manufactured. The damage to the antenna that occurred during storage in Sweden is not a direct result of Iraq's invasion and occupation of Kuwait. The Panel further finds that Binec did not submit sufficient evidence of the additional amounts it incurred with respect to additional work or the "stoppage of the project."

3. Recommendation

131. The Panel recommends no compensation for contract losses.

B. Bank guarantee commissions

132. Binec seeks compensation in the amount of US$26,525 for the cost of establishing and maintaining bank guarantees under the contract from 1 June 1990 until 31 December 1992.

133. Binec did not provide the bank guarantees or proof of payment of the bank guarantee commissions. The Panel finds that Binec did not submit sufficient information or documentation to support this loss item.

134. The Panel recommends no compensation for bank guarantee commissions.

C. Recommendation for Binec

Table 11. Recommended compensation for Binec's claim

Claim element	Claim amount (US$)	Recommended compensation (US$)
Contract losses	345,870	nil
Bank guarantee commissions	26,525	nil
Total	372,395	nil

135. Based on its findings regarding Binec's claim, the Panel recommends no compensation.

X. CONTRACTS ADMINISTRATION LIMITED

136. Contracts Administration Limited, a private limited company incorporated in Jersey, Channel Islands, seeks compensation in the amount of US$588,622 for loss of profits, loss of future profits and loss of tangible property. Contracts Administration Limited is a management consultant to the international construction industry. Contracts Administration Limited stated it had established headquarters in Kuwait City and was working on 12 projects in Kuwait for nine different clients.

Table 12. Contracts Administration Limited's claim

Claim element	Claim amount (US$)
Loss of profits	460,953
Loss of future profits	68,969
Loss of tangible property	58,700
Total	588,622

A. Loss of documents

137. In its reply to the claim development letter, Contracts Administration Limited provided a comprehensive statement of claim. Contracts Administration Limited revised downward the amount claimed for loss of profits. It did not, however, provide any evidence to support its claim. Contracts Administration Limited stated that its head office in Kuwait was looted during the Iraqi invasion and that all documents and records were lost or destroyed. Contracts Administration Limited asserts that it is therefore unable to produce the evidence requested by the secretariat. Contracts Administration Limited also stated that it did not maintain any records at its offices in Jersey or at the offices of its accountants or lawyers in Jersey.

138. Contracts Administration Limited contended that it tried to contact one of its clients, International Contractor's Group (ICG), but that it was unable to do so as the company appeared to have ceased trading after Iraq's invasion of Kuwait. However, ICG submitted its own claim to the Commission. In its claim, ICG stated it resumed its activities in Kuwait in 1992. ICG also stated that a new contract was signed on 26 August 1993 to complete the telecommunications tower project. Further, the claim

submitted by ICG included correspondence between ICG and Contracts Administration concerning the project.

139. In its decision 46 (S/AC.26/Dec.46 (1998)), the Governing Council stated that "in accordance with the Provisional Rules for Claims Procedure and the criteria established by the Governing Council for category "D", "E" and "F" claims, no loss shall be compensated by the Commission solely on the basis of an explanatory statement provided by the claimant".

140. The Panel is not persuaded by the statements of Contracts Administration Limited with respect to its inability to provide adequate documentation or information concerning its stated losses. Contracts Administration Limited did not demonstrate its effort to reconstruct its business records from third party sources and further omitted certain evidence that the Panel examined from other claimants.

141. The Panel finds that Contracts Administration Limited's statements regarding its inability to submit sufficient evidence to support its losses is not credible.

B. Loss of profits

142. Contracts Administration Limited seeks compensation in the amount of US$460,953 for loss of profits on five separate contracts in Kuwait. Contracts Administration Limited stated that it lost earnings on each of the projects and calculated its loss from 2 August 1990 until the planned completion date of each project. Contracts Administration Limited asserted that it generated revenue based on two types of services: monthly professional services to the client and negotiation of contractual claims on behalf of the client.

143. In its original statement of claim, Contracts Administration Limited calculated its loss of profits claim as 15 per cent of its projected earnings. In its revised statement of claim, Contracts Administration Limited stated its revenue, subtracted its estimated costs, and claimed the difference as the amount of its loss of profits on works in progress. However, Contracts Administration Limited did not provide specific information concerning its revenues or estimates of costs.

144. Contracts Administration Limited's statement that a net profit would have been made is unsupported as no financial statements, management reports, budgets, accounts, time schedules or progress reports were provided.

145. In the First "E3" Report, the Panel held that claimants must provide clear and convincing evidence of ongoing and expected profitability to support a claim for loss of profits. In the absence of such evidence, the Panel will not recommend compensation for loss of profits.

146. The Panel finds that Contracts Administration Limited did not submit sufficient, clear and convincing evidence of its loss of profits.

147. The Panel recommends no compensation for loss of profits.

C. Loss of future profits

148. Contracts Administration Limited seeks compensation in the amount of US$68,969 for loss of future profits. Although Contracts Administration Limited stated that it was in the final stages of negotiations with a client at the time of Iraq's invasion of Kuwait, Contracts Administration Limited did not submit a copy of the draft contract to the Commission.

149. Contracts Administration Limited presented its loss of future profits claim based on its stated earnings in prior contracts, rather than on the specific terms of the draft contract with its new client.

150. Contracts Administration Limited did not present any evidence that an agreement had been reached with its new client or the terms of that agreement. The Panel finds the asserted loss of future profits to be too speculative and remote.

151. The Panel recommends no compensation for loss of future profits.

D. Loss of tangible property

152. Contracts Administration Limited seeks compensation in the amount of US$58,700 for the loss of office equipment which was located at its head office in Kuwait and at site offices in and around Kuwait. The property

listed consists mainly of computers, printers, facsimile machines and copiers.

153. Contracts Administration Limited did not submit any evidence of its ownership and acquisition costs of the office equipment, or the presence of the office equipment in and around Kuwait. The Panel finds that Contracts Administration Limited failed to provide sufficient evidence of a loss of tangible property.

154. The Panel recommends no compensation for loss of tangible property.

E. Recommendation for Contracts Administration Limited

Table 13. Recommended compensation for Contracts Administration Limited

Claim element	Claim amount (US$)	Recommended compensation (US$)
Loss of profits	460,953	nil
Loss of future profits	68,969	nil
Loss of tangible property	58,700	nil
Total	588,622	nil

155. Based on its findings regarding Contracts Administration Limited's claim, the Panel recommends no compensation.

XI. SUMMARY OF RECOMMENDATIONS

156. Based on the foregoing, the Panel recommends the following amounts of compensation for direct losses suffered by the claimants as a result of Iraq's invasion and occupation of Kuwait:

(a) Voest-Alpine Aktiengesellschaft (Austria): US$39,962;

(b) Dredging International N.V. (Belgium): US$533,499;

(c) Chemokomplex Contracting & Trading Company (Hungary): nil;

(d) Butec S.A.L. (Lebanon): nil;

(e) G.P. "Beton" A.D. (the former Yugoslav Republic of Macedonia): nil;

(f) Budimex Engineering and Construction Sp. Z.o.o. (Poland): US$519,480;

(g) Binec Industri AB (Sweden): nil; and

(h) Contracts Administration Limited (United Kingdom): nil.

Geneva, 16 December 1998

(Signed) Mr. Werner Melis
Chairman

(Signed) Mr. David Mace
Commissioner

(Signed) Mr. Sompong Sucharitkul
Commissioner

Annex VI

Report and recommendations made by the Panel of Commissioners concerning the first instalment of E4 claims*

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Introduction

1. At its twenty-fourth session, held on 23-24 June 1997, the Governing Council of the United Nations Compensation Commission (the "Commission") appointed Messrs. Robert R. Briner (Chairman), Alan J. Cleary and Lim Tian Huat as the Panel of Commissioners (the "Panel") charged with reviewing "E4" claims. The "E4" population consists of claims submitted by Kuwaiti entities, other than oil sector claims, eligible to file claims under the Commission's "Claim Forms for Corporations and Other Entities" ("Form E").

2. The first instalment of 45 "E4" claims were submitted to the Panel on 20 February 1998, in accordance with article 32 of the Provisional Rules for Claims Procedure (S/AC.26/1992/10) (the "Rules").

3. Pursuant to article 38 of the Rules, this report contains the Panel's recommendations to the Governing Council concerning the first instalment claims.

I. OVERVIEW OF THE FIRST INSTALMENT CLAIMS

4. The first instalment claims were randomly selected from the population of approximately 2,750 "E4" claims to present a representative sample of standard and "unusually large or complex" claims found in this claim population. A random selection was used to enable the Panel, by its resolution of these claims, to establish a comprehensive methodology that can be consistently applied in resolving all "E4" claims.

5. The first instalment claims allege losses aggregating Kuwaiti dinars ("KD") 77,252,103 (US$267,308,315). The claimants also assert claims for interest aggregating KD 2,814,713 (US$9,739,491) and claim preparation costs aggregating KD 119,476 (US$413,412). Six claims assert individual losses ranging between KD 3 million and KD 30 million (i.e., between approximately US$10 million and US$100 million) and account for nearly 70 per cent of the total losses asserted by the first instalment claims.

6. This is consistent with the "E4" claims population wherein 172 "unusually large or complex" claims account for approximately 60 per cent of the total losses asserted. The smallest claim in this first instalment totals a little over KD 4,000 (approximately US$13,800).

7. Claims have generally been classified as "unusually large or complex" if the amount claimed is more than KD 3 million (approximately US$10 million) or if, due to the nature of the legal and factual issues raised in the claim or the voluminous nature of the documentation provided in support of the claimed losses, the verification and valuation of the claim is unlikely to be feasible within 180 days.

8. All the claimants in this first instalment operated in Kuwait prior to Iraq's invasion and occupation of Kuwait. Most of these businesses

traded in consumer items, while some dealt in chemicals, construction materials, vehicles, vehicle parts and industrial products. A significant number of claimants were engaged in service industries, e.g., construction and engineering services, real estate and financial services (leasing and foreign exchange dealerships), transportation, travel and travel-related services. Apart from these trading and service industry businesses, one claimant was the sole provider of mobile phone and paging services in Kuwait, three claimants were engaged in agriculture or agriculture-related industries and two claimants were engaged in textile manufacturing.

9. Form E classifies losses as related to contract, business transaction or course of dealing, real property, other tangible property, income-producing property, payment or relief to others and other losses. Form E also allows, at page E1, claims for loss of earnings or profits.

10. Claimants in this instalment have sought compensation under all loss categories identified on Form E, except loss of business transaction or course of dealing. One claimant, Jawad & Haider Y. Abdulhasan Company, asserted a claim for loss of business transaction or course of dealing. However, on review, it was found that the claim related to loss of income-producing property. Accordingly, this element of the claim was reclassified and reviewed under the latter category. The two most common losses alleged in this instalment are loss of tangible property (mainly furniture, fixtures, equipment and stock) and loss of earnings or profits. First instalment claimants also submitted claims for uncollectible receivables, restart costs, interest and claim preparation costs under the "other losses" category.

II. THE PROCEEDINGS

11. Before the first instalment claims were submitted to the Panel, the secretariat undertook a complete review of these claims in accordance with the Rules. The secretariat first carried out a preliminary assessment of the claims, pursuant to article 14 of the Rules, to verify whether the claims met the formal requirements of articles 14(1) and 14(2). For example, the claims were reviewed to ascertain whether they had submitted proof of incorporation or organization under the laws of Kuwait on the date the claim arose, and contained an affirmation by the authorized official for each claimant that the information contained in the claim is correct. The results of this formal review were entered into a centralized database maintained by the secretariat (the "Claims Database").

12. Originally, fifty claims were randomly selected by the secretariat for inclusion in this first instalment. Of these fifty claims, five presented formal deficiencies and were deferred to subsequent instalments. Accordingly, the secretariat issued no notifications pursuant to article 15 of the Rules for the first instalment claims.

13. A substantive review of the first instalment claims was undertaken by qualified professionals (legal officers, accountants and loss adjusters)

within the secretariat, to identify significant legal and factual issues. The results of the review, including the significant issues identified, were recorded in the Claims Database.

14. The Executive Secretary of the Commission submitted reports dated 31 January 1997 and 11 April 1997 to the Governing Council in accordance with article 16 of the Rules. These reports covered, inter alia, the first instalment of "E4" claims. A number of Governments, including the Government of Iraq, submitted to the secretariat for transmission to the Panel additional information and views in response to the Executive Secretary's reports.

15. For "unusually large or complex" claims, the secretariat prepared narrative claim summaries recording, inter alia, the significant issues identified in the claims. These summaries, which included annotated references to the nature and type of supporting evidence submitted by the claimants, were submitted to the Panel pursuant to article 32 of the Rules.

16. Accordingly, at the conclusion of the (i) preliminary assessment; (ii) substantive review; and (iii) article 16 reporting, the secretariat submitted the following documents to the Panel for consideration:

(a) the claim documents submitted by the claimants;

(b) the preliminary assessment reports prepared by the secretariat under article 14 of the Rules;

(c) the claim summaries and reports prepared by the secretariat;

(d) information and views of Governments, including the Government of Iraq, received in response to the article 16 reports; and

(e) other information, such as legal briefing notes, deemed, under article 32 of the Rules, to be useful to the Panel for its work.

17. The number of claims before the Panel in this instalment, the volume and nature of evidence presented in these claims and the need to develop a comprehensive verification and valuation methodology for all "E4" claims necessitated the use of expert consultants in accordance with article 36(b) of the Rules. The Panel, at its first meeting, retained the services of an internationally-renowned accounting firm and an internationally-renowned loss adjusting firm, selected by a competitive bidding process in accordance with applicable United Nations rules. The Panel's use of expert consultants in this manner is consistent with Commission practice. (See "Report and recommendations made by the Panel of Commissioners concerning the first instalment of 'E2' claims" (S/AC.26/1998/7) (the "First E2 Report"), para. 26S and supporting notes; and "Report and recommendations made by the Panel of Commissioners concerning part one of the first instalment of claims by Governments and international organizations

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(category 'F' claims)" (S/AC.26/1997/6) (the "First F Report"), para. 107 and supporting notes.)

18. The Panel directed the expert consultants to review each claim in accordance with the verification and valuation methodology developed by the Panel (discussed infra) and to submit a detailed report for each claim summarizing the expert consultants' findings.

19. During the period 17-21 January 1998, at the direction of the Panel, four members of the secretariat and one accounting and one loss adjusting consultant travelled to Kuwait to obtain information useful to the Panel in their development of the verification and valuation methodology. The delegation met with governmental agencies, including the Public Authority for Assessment of Compensation for Damages Resulting from Iraqi Aggression ("PAAC"), the Ministry of Planning (Central Statistical Office), the Ministry of Commerce, the Kuwait Chamber of Commerce & Industry, the Public Authority of Industry, several banks, accountants and loss adjusters and a number of claimants.

20. By its first procedural order dated 20 February 1998, the Panel gave notice of its intention to complete its review of the first instalment claims and submit its report and recommendations to the Governing Council within twelve months of 20 February 1998. In this procedural order, the Panel requested the claimants to submit copies of their audited financial statements for the years 1988 to 1993, to the extent they had not already done so. The requested financial statements were required to be submitted on or before 1 June 1998.

21. The largest claim in the first instalment is that of Mobile Telephone Systems Company, requesting compensation for losses in excess of KD 30 million (approximately US$100 million). By its procedural order dated 20 March 1998, the Panel instructed the secretariat to transmit the statement of claim and all other supporting documents filed by this claimant to the Government of Iraq. The same day, the documents were transmitted to the Government of Iraq. The Panel invited the Government of Iraq to submit its response to this claim within 180 days of the date of the procedural order.

22. On 24 April 1998, the Panel issued four additional procedural orders to claimants in this instalment, i.e., Mobile Telephone Systems Company, Kuwait Automotive Imports Company, Sons of Fahad Al-Sultan & Partners Co. W.L.L., and Union Trading Company Abdul-Razaq Al-Rozouki and Partner W.L.L. The Panel also issued a procedural order to Musaad Al-Saleh and Sons Investment Group W.L.L. on 18 June 1998. These claimants were given 90 days to respond to various detailed questions relating to their claims. On 15 September 1998 the Panel issued a procedural order seeking additional clarifications from Sons of Fahad Al-Sultan & Partners Co. W.L.L. This claimant was requested to respond to the additional questions by 6 November 1998. On 17 November 1998 the Panel issued a procedural order

to Carpets Industry Company K.S.C. (Closed). This claimant was requested to respond to the clarification sought by 4 December 1998.

23. The Panel's procedural orders were transmitted to the Government of Iraq and the Government of Kuwait. The Panel received responses to all its procedural orders issued to claimants. The Government of Iraq responded, by its letter dated 4 November 1998, to the Panel's procedural order dated 20 March 1998 after the Panel allowed the Government of Iraq an extended period to file its response.

24. Based on its review of the documents submitted, including documents and clarifications received in response to procedural orders, the Panel concluded that the issues presented by the first instalment claims had been adequately developed and that oral proceedings to further explore such issues were not required.

III. LEGAL FRAMEWORK

A. Applicable law

25. In resolution 687 (1991), the Security Council established Iraq's liability under international law for any direct loss, damage or injury arising as a result of Iraq's unlawful invasion and occupation of Kuwait. (See also First F Report, paras. 47-49.) Further, article 31 of the Rules identifies the law to be applied by the Commissioners in considering the claims, i.e., Security Council resolution 687 (1991) and other relevant Security Council resolutions, the criteria established by the Governing Council for particular categories of claims and any pertinent decisions of the Governing Council, and, where necessary, other relevant rules of international law.

B. Procedural and evidentiary requirements

26. Article 35 of the Rules requires the Panel to "determine the admissibility, relevance, materiality and weight of any documents and other evidence submitted". The same article states, *inter alia*, that claims in category "E" must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and amount of the claimed loss. In this regard, Governing Council decision 46 concerning explanatory statements by claimants in categories "D", "E" and "F", clarifies that such "documents and other evidence must exceed the reasonable minimum that was required for claims in categories 'A', 'B' and 'C'" and that "no loss shall be compensated by the Commission solely on the basis of an explanatory statement provided by the claimant" (S/AC.26/Dec.46 (1998)).

27. In its decision 15 on compensation for business losses resulting from Iraq's unlawful invasion and occupation of Kuwait where the trade embargo and related measures were also a cause, the Governing Council expressly states in relation to "all types of business losses, including losses

relating to contracts, transactions that have been part of a business practice or course of dealing, tangible assets and income-producing properties", that "[t]here will be a need for detailed factual descriptions of the circumstances of the claimed loss, damage or injury" (S/AC.26/1992/15, paras. 5 and 10).

28. The instructions for claimants in Form E specifically instruct category "E" claimants to include with their statements of claim the following particulars:

> "(a) the date, type and basis of the Commission's jurisdiction for each element of loss ... ;
>
> (b) the facts supporting the claim;
>
> (c) the legal basis for each element of the claim; and
>
> (d) the amount of compensation sought, and an explanation of how this amount was arrived at."

29. It is therefore well established that claimants in category "E" (and categories "D" and "F") need to meet more specific evidentiary standards and sufficiently demonstrate the circumstances and amount of the claimed loss.

C. The Panel's role in the proceedings

30. Based on the foregoing, three specific tasks have been entrusted by the Governing Council to the Panel. First, the Panel must determine whether an alleged loss falls within the jurisdiction of the Commission. Second, the Panel must verify whether the loss was actually suffered by the claimant. Third, the Panel must determine the amount of the compensable loss suffered by the claimant and recommend an award thereon. (See also First E2 Report, para. 39.)

31. With specific reference to the first instalment claims, the Panel has sought, by its resolution of these claims, to establish a consistent, comprehensive, fair and administrable verification and valuation methodology for all "E4" claims. The methodology described below was developed by the Panel with these objectives in mind.

IV. VERIFICATION AND VALUATION OF CLAIMS

A. Approach

32. As mentioned above, the first task undertaken by the Panel is to determine which losses asserted by the claimants were suffered as a direct result of Iraq's invasion and occupation of Kuwait. (The Panel's findings in this regard have been described in subsequent sections of this report.)

After making this determination, the Panel confirms whether each compensable loss has been suffered in the amount claimed.

33. In determining the relevance, materiality and weight of the documents and other evidence submitted, the Panel is aware that shortcomings in evidence lead to difficulties in accurately quantifying claims.

34. In the claims before this Panel, such shortcomings mean that a claimant produces sufficient evidence to establish that it suffered a loss as a direct result of Iraq's invasion and occupation of Kuwait, but fails to provide sufficient evidence to support the specific amount of the claimed loss. In such situations, the Panel can often establish a range of values to quantify the alleged losses, but not the specific amount of such losses. Claims with evidentiary shortcomings that prevent their precise quantification therefore present a risk that they might be overstated. In this report the Panel uses the expression "risk of overstatement" to refer to such cases. The expression "risk of overstatement" is therefore used as a term of art in this report and does not connote or imply any deliberate overstatement by any claimant.

35. Awarding nothing in cases presenting a "risk of overstatement" ignores the adverse impact that Iraq's invasion and occupation of Kuwait had on the ability of Kuwaiti claimants to document their claims. The loss of official records and documentation as a result of Iraq's invasion and occupation of Kuwait is well documented in the report to the Secretary-General by a United Nations Mission, led by former Under-Secretary-General Mr. Abdulrahim A. Farah (the "Farah Report"). The Farah Report assesses the scope and nature of damage inflicted on Kuwait's infrastructure during Iraq's occupation, and is annexed to a letter dated 26 April 1991 from the Secretary-General to the President of the Security Council (S/22535).

36. The Panel notes the non-judicial and fact-finding nature of the Commission's mandate and procedures, identified in the report of the Secretary-General pursuant to para. 19 of Security Council resolution 687 (1991) (S/22559, paras. 20 and 25). The Panel's approach to the verification and valuation of claims therefore balances the claimant's inability to always provide best evidence against the "risk of overstatement" introduced by shortcomings in evidence.

37. The following process, based on the above approach, has been applied by the Panel in verifying and valuing the first instalment claims.

B. Verification and valuation methodology

1. Evidentiary summary

38. The first step in the verification and valuation process is a detailed review of all the documentary evidence submitted by the claimant for each loss category. This review is carried out, under the Panel's

supervision, by the secretariat and external consultants (accountants and loss adjusters) engaged as experts.

39. The nature of the documents reviewed and, on completion of the evidentiary review, the quality of the cumulative and corroborative effect of such documents are reported in an evidentiary summary. For "unusually large or complex claims" the secretariat prepares narrative claim summaries recording the significant legal and factual issues raised in the claims. These summaries, which include annotated references to the nature and type of supporting evidence, are submitted to the Panel pursuant to article 32 of the Rules (in addition to the documents listed in paragraph 16, *supra*).

40. Shortcomings in documentary evidence are also noted in the evidentiary summary. If such shortcomings are due to the loss of primary documentation during Iraq's invasion and occupation of Kuwait, this assertion is reported together with the claimant's account of the circumstances surrounding the alleged loss of documentation. The Panel assesses the reasonableness of the claimant's inability to provide primary documentation and determines appropriate methods for evaluating the amount of loss based upon the evidence provided. For shortcomings in evidence that are due to other reasons, the Panel's approach depends on the nature of the deficiency.

2. Loss classification

41. During the evidentiary review, the claimant's classification of losses is verified. This confirms that appropriate loss categories are used by each claimant. (Loss category selection is based on principal asset and income type, e.g., loss of real property, loss of tangible property, loss of profits, etc.) This verification is necessary to allow the Panel to apply the proper review procedures discussed *infra*.

42. For most claimants, the claims under the category loss of tangible property require partial reclassification into appropriate sub-categories, i.e., loss of stock, loss of cash and loss of vehicles. This reclassification is often done by the claimants themselves in their statements of claim.

43. However, in a few cases, losses asserted under other categories also require reclassification. For example, in the claim of Integral Services Company W.L.L., a loss asserted as a loss of income-producing property was found to be a claim for loss of tangible property, stock and vehicles and was reclassified accordingly.

3. Materiality

44. The next step in the Panel's review is to identify areas with the greatest "risk of overstatement". To facilitate this identification, the Panel uses a "materiality" standard developed from and based on international accounting practice.

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45. Individual items and aggregate balances are deemed [illegible] be "material" if they exceed the level where the Panel would be concerned if the claim was overstated by this amount or more. Such amount is defined as the level of materiality. The Panel's methodology is designed to provide a high level of certainty in detecting overstatement greater than the materiality level. Based on specific attributes of the claim population, such as the number of claims and the range of values claimed, materiality has been set at the lower of 5 per cent of the total value of the net claim and KD 10,000 (approximately US$34,600). The net claim is treated, for this limited purpose, as the gross asserted claim value less amounts claimed for disallowed items (e.g., claims for losses outside the Commission's jurisdiction) and amounts claimed for interest, claim preparation costs, cash losses and uncollectable receivables. The percentage limit approximates the level generally applied in accordance with international accounting practice. The monetary limit has been set to cap the value of materiality on high value claims and is applied in recognition of the relative lack of interdependence noted between various loss categories.

46. The use of a materiality standard allows the Panel to identify items that should be subject to a greater level of scrutiny. Non-material items are also subject to review but to a lesser extent than material items. High risk loss categories, such as loss of cash, receive the highest level of review regardless of materiality.

47. The distinction in review processes between material and non-material items ensures that the Panel's review of each claim focuses on higher value and higher risk items. This provides a greater level of accuracy in verification and valuation within the time-frame established for review of the claims.

4. Specific review methodologies

48. Specific review methodologies have been developed for each loss category (e.g., loss of tangible property, loss of profits, etc.) and in some cases for individual items within a loss category (e.g., separate review methodologies have been developed for loss of vehicles, loss of stock and loss of cash).

49. The methodologies typically consist of a series of questions structured uniquely for each loss category. The methodologies allow the Panel to gauge the weight and sufficiency of the documents and other evidence submitted by the claimants to support asserted losses.

50. Since the methodologies are specific to each loss category (or sub-category), the issues addressed therein are not identical. However, they have some common features.

(a) Fundamental criteria

51. The first stage in each methodology reviews whether the asserted loss meets certain fundamental criteria. Negative responses at this stage of the review generally result in the Panel disallowing the claimed loss. For example, in a claim for loss of contract, a fundamental question addressed by the Panel is whether the claimant has submitted documents or other evidence to establish the existence of the contract at the time of Iraq's invasion and occupation of Kuwait.

(b) Actual adjustments and satisfactory claims

52. The second stage in each methodology identifies whether the loss claimed (i) is supported by satisfactory evidence; (ii) requires actual adjustment based upon identified deficiencies; or (iii) presents a "risk of overstatement".

53. If the evidence supports the claimed loss and does not present a "risk of overstatement", then the claimed loss is approved by the Panel without adjustment. If instead the need for actual adjustments is identified, then these adjustments are applied by the Panel (e.g., in case of apparent double-counting or a claimant's failure to factor depreciation into its claim for loss of fixed assets).

(c) Risk adjustment

54. If, based on a review of the evidence, the Panel concludes that the claimant suffered a loss as a direct result of Iraq's invasion and occupation of Kuwait, but the Panel is unable to either quantify the actual adjustment required to specifically value the loss or state that the claim is satisfactory as presented, then a "risk of overstatement" exists for that loss.

55. The "risk of overstatement" must then be factored into the recommended award. The third phase of the Panel's review process therefore assesses the "risk of overstatement" and the adjustment necessary to offset such risk.

56. Based on its review of the claims, the Panel identifies the evidentiary shortcomings in each loss category. Then, in consultation with its accounting and loss adjusting experts, the Panel quantifies the most probable impact of such shortcomings. To offset the "risk of overstatement" identified, the Panel applies corresponding adjustments to the claims.

57. The adjustments are specific to each loss category since some loss types pose inherently higher "risks of overstatement". For example, the "risk of overstatement" in a claim for repair costs incurred is lower than the "risk of overstatement" in a claim for loss of profits that is necessarily based on projections.

58. Care is taken to ensure that a claim is not adjusted twice for the same evidentiary shortcoming.

59. The adjustments made to offset "risks of overstatement" are not applied in a vacuum. Where exceptional circumstances warrant, the Panel considers alternative methods for valuing the claimed losses.

5. Non-material items

60. Non-material items are reviewed by the Panel for reasonableness. Where non-material items aggregate to a material amount they are reviewed on a sample basis using a monetary unit sampling technique. Although monetary unit sampling is primarily based on attribute sampling theory, it gives conclusions based on monetary amounts and not rates of occurrence. This is achieved by defining each monetary unit of the population as a separate sampling unit with every monetary unit having an equal chance of selection by choosing every nth monetary unit of the population.

61. The technique is ideally suited to test claims for overstatement. The sample size is derived by dividing the product of the "population value" and the "assurance factor" by the "materiality level". The "population value" is the aggregate monetary value of all the items to be selected. The "materiality level" has been explained in paragraphs 44-47, supra. The "assurance factor" is a number computed from what is known as the Poisson distribution, where the variables are confidence levels and the number of errors to be discovered in the sample. For simplicity, the Panel uses the monetary materiality level as the sampling interval which equates to using an assurance factor of one. This allows the Panel to conclude that on the "balance of probability" the population being tested is not overstated by more than the monetary materiality level. In the case of "E4" claims, using a 5 per cent materiality level subject to a further monetary limit, implies that on the average claim, adopting a sampling interval of KD 10,000 will result in the Panel being able to draw a 92 per cent assurance that each claim element being evaluated on a sample basis is not overstated by more than 5 per cent (i.e., the percentage materiality level) of the asserted claim.

62. The sample items are reviewed using the applicable methodology. This method of review allows a consistent and uniform assessment of the claims by the Panel.

V. THE CLAIMS

63. Applying the methodologies described above, the Panel has reviewed the first instalment claims according to the nature and type of loss identified. Accordingly, the Panel's recommendations have been set out below by loss type. (Reclassified losses have been dealt with in the section pertaining to the loss category into which the Panel reclassified the losses.)

A. Contract

64. Claims for loss of contract are raised by two claimants in this instalment. These claims do not relate to contracts with the Government of Iraq or to contracts requiring performance in Iraq.

65. Mobile Telephone Systems Company, seeks compensation for the increased cost of completing certain pre-existing construction contracts following the end of Iraq's invasion and occupation of Kuwait. The contract loss claim raised by Globe Commercial Company relates to loss of rent on leases the claimant held in Kuwait.

66. Integral Services Company W.L.L. also asserted a claim for loss of contract. However, as this related to profits lost on underlying contracts, the claim was reclassified and reviewed as a loss of profits claim. A second loss of contract claim asserted by Globe Commercial Company was found to relate to uncollectible receivables. The claim was accordingly reclassified and is discussed in the section of this report relating to receivables (paras. 207-219, infra).

1. Compensability

67. Mobile Telephone Systems Company's claim deals with three contracts that were being executed at the time of Iraq's invasion of Kuwait. The first contract was for the construction of a new office building, the second contract was for engineering consulting services in relation to the office building being constructed and the third contract related to furnishings for the new office building. The claim in each case was for increased costs paid post-liberation on the underlying contract.

68. The claimant established that it was required to suspend performance on the construction contract during the period of Iraq's occupation of Kuwait. It also established, with reference to the original contract terms, that it was unable to terminate the original contract, or to negotiate a fresh contract with a new contractor, without incurring significant additional costs. The claimant provided documents to substantiate that the contractor was unable to recommence work on the contract, post-liberation, without increasing contract costs. Finally, the claimant produced correspondence to show that subsequent to the end of Iraq's occupation of Kuwait, it negotiated the price increase on construction costs down from 50 per cent of the original contract price to 20 per cent of the original contract price. The issue before the Panel was whether this 20 per cent increase is a direct result of Iraq's invasion and occupation of Kuwait, and if so to what extent.

69. The Panel is of the view that, in the period following the end of Iraq's occupation of Kuwait, prices in Kuwait were likely to be affected by various factors. These include (i) the "widespread destruction of capital assets and the supporting infrastructure, as well as the looting of

equipment and inventories" during the period of Iraq's invasion and occupation of Kuwait, as described in paragraph 47 of the Farah Report, (ii) the general economic situation caused by the trade embargo and related measures, and (iii) other factors such as an overall reduction in the return to Kuwait of expatriate manpower.

70. In the present case, the evidence submitted (e.g., copies of the relevant contracts and correspondence between the claimant, its independent consultants and the contractor relating to the negotiated price increase), indicates that the increased contract price was agreed on a lump sum basis and was attributable to various factors, including (i) lack of construction equipment and increased rental costs for construction equipment; (ii) lack of skilled manpower; (iii) increased material costs; and (iv) the fact that the contractor may have under-bid prices on the original pre-invasion contract.

71. The Panel is of the view that some of these factors are a direct result of Iraq's invasion and occupation of Kuwait, e.g., increased equipment rental costs because of the widespread destruction of such equipment during the period of Iraq's invasion and occupation. Other factors are clearly unrelated to Iraq's invasion and occupation of Kuwait, e.g., the fact that the contractor under-bid prices on the pre-invasion contract.

72. However, many areas are not clear-cut. Increased material costs could be attributable both to destruction and looting of inventory during the period of Iraq's invasion and occupation of Kuwait and to the general economic situation in Kuwait caused by the trade embargo and related measures. Similarly, labour shortages could be attributed both to the dislocation of Kuwaiti and expatriate manpower during the period of the invasion and occupation and to other factors such as the general reduction in the return to Kuwait of expatriate manpower. The Farah Report states, at paragraph 41, that "Kuwait City, previously a modern, urban centre with thriving bazaars and a busy commercial district, had become a ghost town. The same was true of other urban areas across the country, where major social dislocations had occurred during the occupation of the country: two thirds of Kuwaiti nationals had sought refuge abroad; three quarters of the labour force had been obliged to leave Kuwait". (See also "Report on the situation of human rights in Kuwait under Iraqi occupation, prepared by Mr. Walter Kälin, Special Rapporteur of the Commission on Human Rights, in accordance with Commission resolution 1991/67" (E/CN.4/1992/26), paras. 240-245.)

73. In view of the above, the Panel believes that some portion of the increased contract costs are a direct result of Iraq's invasion and occupation of Kuwait. The extent to which such increases are a direct result of Iraq's invasion and occupation depend on the facts and circumstances of each case.

74. In the case of Mobile Telephone Systems Company, the Panel believes it is reasonable to expect the claimant to negotiate a lump sum price increase rather than a segmented price increase, with each segment of the price increase attributable to a separate cause. Based on the principles enunciated in Governing Council decision 15, paragraph 9(II)(ii), the nature of the underlying contract, the work involved and the price negotiations documented, the Panel determines that half of the 20 per cent price increase is a direct result of Iraq's invasion and occupation of Kuwait and is therefore compensable.

75. Mobile Telephone Systems Company also raises a loss of contract claim for fees paid to its engineering consultants during the extended period that the contract was continued after the liberation of Kuwait. The Panel notes that the performance period remaining on this contract at the time of Iraq's invasion of Kuwait was five months. As such, the claim for consulting fees is allowed for the eight months negotiated for contract completion less the five months outstanding at the time of the loss. Additional overruns are disallowed either because they are not shown to be a direct result of Iraq's invasion and occupation of Kuwait, or because they are attributable to contract variations or contractor delays.

76. A claim is also raised by Mobile Telephone Systems Company for increased furnishing costs based on prices quoted nearly two years after the liberation of Kuwait. The Panel disallows this portion of the claim as the claimant has not demonstrated that such increased costs are a direct result of Iraq's invasion and occupation of Kuwait. Given the lapse in time in restarting the underlying contract and the absence of evidence on whether the original contract prices were time bound, the Panel believes that the increased furnishing costs appear to have been caused by general price inflation in Kuwait and the substantially unexplained delay in completing the construction of the building for which this furnishing was required.

2. Verification and valuation method

77. For contract losses, after determining which losses are compensable, the Panel proceeds to verify whether the claimant has demonstrated the existence of a valid contractual relationship at the time of the loss. Claims that do not demonstrate the existence of a valid contractual relationship, or provide a reasonable explanation for the lack of such evidence, are disallowed at this fundamental stage of the review.

78. The Panel then reviews evidence of the repudiation, cancellation or failure to perform the contract. In cases where no evidence of termination or cessation is provided, the Panel approaches this shortcoming based on the facts and circumstances specific to the contract. For example, in the case of rental contracts, the Panel is of the view that it is reasonable to expect claimants to encounter difficulty in obtaining evidence of termination from tenants fleeing Iraq's invasion and occupation of Kuwait. On the other hand, the Panel expects claimants to provide evidence of

termination in the case of supply contracts where the other contracting party continued operations after March 1991. A failure to provide evidence of termination in the latter case, without any reasonable explanation thereof, will result in the claim being disallowed at this stage of the review.

79. On establishing, with reasonable certainty, that a valid contractual relationship existed at the time of Iraq's invasion of Kuwait and that the contractual relationship was terminated or suspended as a direct result of the invasion, the Panel assesses whether the loss asserted was suffered in the amount claimed, i.e., whether the loss asserted can be reconciled with the contractual terms. Amounts claimed in excess of contractual terms are adjusted.

80. The Panel then reviews areas presenting "risks of overstatement". Governing Council decision 15, paragraph 9(IV)(i), clarifies that "[t]he duty to mitigate applies to all claims". The Panel identifies whether the claimant has demonstrated, on the basis of the evidence provided, its attempt(s) to mitigate the loss in the best way possible, given the circumstances prevailing in Kuwait during Iraq's occupation and immediately thereafter. Where the Panel concludes that the claimant has failed to adequately mitigate its loss, it adjusts the claim to offset the effects of the failure to mitigate.

81. The Panel next verifies whether the claimant has matched costs with revenues in calculating its loss. Where a claimant fails to make its claim net of incremental and variable costs that would otherwise have been incurred, the Panel adjusts the claim where such costs are determinable. If such costs are not determinable, the Panel adjusts the claim based on the "risk of overstatement" presented.

82. The Panel verifies whether the claimant has demonstrated a reasonable expectation of meeting its contractual obligations and reaching a satisfactory settlement of the contract prior to the date of the loss. Where a claimant was in default at the time of the loss and would ordinarily have had to incur penalties or damages on the contract, the Panel verifies whether the claim has been adjusted for such costs. Where the Panel concludes that a claimant's expectation of meeting its contractual obligations and reaching a satisfactory settlement of the contract prior to the date of the loss is uncertain, and the claimant has failed to factor this aspect into the loss claimed, the Panel makes an actual adjustment. In cases where this actual adjustment cannot be quantified with certainty, the Panel adjusts the claim based on the "risk of overstatement" presented.

83. Governing Council decision 9, relating to types of business losses and their valuation (S/AC.26/1992/9), states at paragraph 10, that "[a] relevant consideration may be whether the contracting parties could resume the contract after the lifting of the embargo against Kuwait, and whether they have in fact resumed the contract." The Panel reviews the evidence on

contractual remedies and whether resumption of the contract was possible. Where the claimant fails to demonstrate that it pursued its contractual remedies and the claimant does not provide a reasonable explanation for this failure, this shortcoming leads to a further adjustment.

84. Finally, the Panel considers whether, based on the cumulative effect of the evidence submitted, any additional adjustments are warranted.

3. Evidence submitted

85. Both claimants with contract losses in this instalment provided substantial evidence to establish the existence of valid contractual relationships on the date of the loss. However, Globe Commercial Company failed to provide evidence of termination of its lease contracts.

86. The Panel still recommends compensation for this claimant, for losses related to rental contracts, absent specific evidence of termination of each contract, as it is reasonable to assume that the claimant will not be able to obtain evidence of termination of the contracts from tenants fleeing Kuwait during the invasion and occupation. The Panel's recommended award for this claim is arrived at after making additional adjustments identified in the course of applying the loss of contract verification and valuation methodology described above.

87. The Panel's treatment of the Mobile Telephone Systems Company loss of contract claims is discussed in paragraphs 67-76, supra.

B. Real property

88. Twelve claimants in this instalment asserted claims aggregating over KD 3 million (approximately US$10 million) for loss of real property. These claims relate to damage to various freehold and leasehold premises in Kuwait.

1. Compensability

89. Most claimants established the fact and nature of damage to their buildings and facilities by providing copies of witness statements, corroborating statements in their audited accounts and photographs. The nature of damage alleged and the location of all the properties in Kuwait established that the damage was a result of military operations in Kuwait and the breakdown of civil order in Kuwait during the period of Iraq's invasion and occupation of Kuwait, as set out in paragraph 21 of Governing Council decision 7 dealing with the criteria for additional categories of claims (S/AC.26/1991/7/Rev.1). Accordingly, the direct causal link between the loss alleged and Iraq's invasion and occupation of Kuwait is sufficiently well established in the first instalment claims for loss of real property.

90. While most claims were based on generally accepted methods of valuing the loss (e.g., actual cost of repair or net book value), Kuwait Agriculture Company W.L.L. sought compensation on the basis of the original cost of the building without considering accumulated depreciation. Based on its review of evidence of the building's age and the circumstances of the loss, the Panel concludes that there was a diminution in the value of the building prior to Iraq's invasion of Kuwait. As the original cost value ignores normal depreciation, the Panel concludes that the claimant's basis of valuation is inappropriate.

91. Based on the evidence provided by the claimant and the Governing Council's guidance in decision 9 on the valuation of assets, the Panel finds that the appropriate method of valuation in this case is net book value, i.e., historical cost less accumulated depreciation.

2. Verification and valuation method

92. The first stage in verifying and valuing loss of real property claims is identifying the nature of the claimant's interest in the affected property. Where a claimant's interest in the property is uncertain, the Panel determines whether the claimant is otherwise entitled to compensation based on its review of all the evidence submitted.

93. The Panel then determines whether the claim is for costs incurred in the repair or replacement of the damaged property, or whether the claim is based on a valuation or other estimate of the loss.

94. Where a valuation opinion or estimate has been used, the Panel tests the valuation using an alternative review method, discussed below. Where the claim is based on costs actually incurred, the Panel proceeds to verify the evidence provided to support the amount actually spent to repair or replace the damaged property.

95. Proof of payment can be offered in numerous ways, ranging from certifications in major repair contracts to invoices and payment receipts in minor repair contracts. If the evidence of payment does not support the amount claimed, the Panel adjusts the claim to the amount supported by the evidence.

96. In calculating the loss suffered, the Panel reviews whether the claim is for repairs to or the replacement of property. In the case of repairs, the Panel verifies whether the claim reflects maintenance costs that would have been incurred in the ordinary course of events. The full amount of such costs (e.g., routine painting) cannot be regarded as a direct result of Iraq's invasion and occupation of Kuwait and is therefore discounted. Similarly, for replaced items, the Panel verifies whether the claimant has considered normal depreciation of the original item replaced. Where normal adjustments for maintenance and depreciation have not been made by the claimant, the Panel adjusts the claim accordingly.

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97. The Panel then checks for evidence of betterment. As identified by the "E2" Panel, "[b]etterment occurs when old and used items are replaced with new or better ones". (See First E2 Report, para. 271.) For example, in the case of real property, this can occur during the reconstruction phase when tile floors are replaced with marble, or room size dimensions are increased. If betterment is evident (e.g., on reviewing payment receipts, contract terms and damage survey reports), the Panel adjusts the claim for betterment, unless the betterment is unavoidable. Based on the cumulative effect of the evidence submitted, the Panel considers whether any further adjustment of the claim is warranted.

98. Three real property claims in the first instalment are not based on actual costs incurred. The claim of Union Trading Company Abdul-Razaq Al-Rozouki and Partner W.L.L. is based on the net book value of affected assets; Kuwait Agriculture Company W.L.L. seeks compensation based on original value without considering depreciation, (but the Panel has applied net book value as discussed above); and the claim of Jawad & Haider Y. Abdulhasan Company is based on a cost estimate.

99. For claims based on net book value, the Panel reviews the audited accounts and documents provided to establish the cost and date of acquisition of the asset. Where the accounts are unaudited or materially qualified, such shortcomings give rise to a "risk of overstatement". The depreciation applied in the audited accounts is reviewed for reasonableness and the claim adjusted if necessary. Finally, the Panel verifies whether, based on the cumulative effect of the evidence submitted, any further adjustment is necessary.

100. For claims based on a cost estimate, the Panel verifies whether the claim is for repairs or replacement of real property and reviews the evidence submitted relating to the contractor's qualifications and independence. The Panel also checks the estimate for betterment. The Panel then compares the estimate using an alternative method of valuation, e.g., net book value (based on audited accounts), and arrives at a recommended value by applying the method that assesses the loss with a greater level of certainty.

101. In a claim based on a valuation or estimate, the Panel also reviews the evidence provided to determine why the claimant failed to carry out the repairs or replace the assets. Where no reasonable justification is provided, the claim is adjusted for the "risk of overstatement" created by this shortcoming.

3. Evidence submitted

102. Most claimants submitted copies of title deeds or leases to establish their interest in the affected property. Where leases were submitted, the secretariat carried out additional checks to ensure that no duplicate claims had been filed by the owners of the leased properties. The Panel

also referred to the claimant's audited accounts to corroborate the claimant's interest in the affected properties.

103. Sons of Fahad Al-Sultan & Partners Co. W.L.L. sought compensation for damaged properties that had been mortgaged to a bank prior to Iraq's invasion and occupation of Kuwait. The Panel determined that the lender bank has not raised a similar claim for the affected properties and that the claimant actually incurred the repair costs claimed. Accordingly, the Panel recommends compensation for this claimant.

104. Claimants sought to support repair costs by providing copies of payment receipts or certificates, invoices, contract documents and audited accounts. However, most claimants did not include any adjustments for applicable maintenance or depreciation in their asserted losses. The Panel adjusted the claims to account for these items. Similar adjustments were made by the Panel in cases of betterment.

105. In the case of the claim based on estimated replacement cost, i.e., Jawad & Haider Y. Abdulhasan Company, the Panel finds the estimate provided to be fundamentally flawed. The estimate is prepared by a 51 per cent owned subsidiary of the claimant. Betterment, though evident, is not quantified. No asset ages are provided and no maintenance element is considered. There is also insufficient evidence to demonstrate the extent or nature of the loss alleged.

106. The audited accounts provided by this claimant contain numerous material qualifications and the auditors have declined to offer an opinion on the veracity of the financial statements. Additionally, the claimant does not explain its failure to repair the properties or explain the numerous evidentiary shortcomings. However, the claimant's audited accounts for the two years 1990 and 1991 do report an extraordinary loss of real property as a direct result of Iraq's invasion and occupation of Kuwait. As this is independent proof of the fact of loss, the Panel's recommended award has been arrived at after adjusting the net book value reported in these accounts to offset the "risk of overstatement" attributable to the material qualifications in the accounts and the lack of any explanation for the claimant's failure to repair the properties.

C. Tangible property

107. Tangible property losses are raised by all but two of the claimants in this first instalment. The claims for loss of tangible property relate mainly to loss of stock, furniture, fixtures, equipment and vehicles. Other claims in this category relate to loss of cash.

1. Compensability

108. As in the case of real property claims, most claimants establish the fact and nature of damage to tangible property by providing copies of witness statements, statements from their audited accounts and photographs.

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The claims establish, in accordance with paragraph 21 of Governing Council decision 7, that the damage was a result of military operations in Kuwait, actions by officials, agents or employees of the Government of Iraq or its controlled entities during the period of Iraq's invasion and occupation of Kuwait, in connection with the invasion or occupation and the breakdown of civil order in Kuwait during that period. Accordingly, the direct causal link between the loss alleged and Iraq's invasion and occupation of Kuwait is sufficiently well established in the first instalment claims for loss of tangible property.

109. The issues presented in the claims for tangible property therefore relate mainly to evidentiary standards. As these issues are closely associated with the methodology adopted by the Panel to review and verify the loss of tangible property claims, these issues are discussed in the following sub-sections dealing with the various verification and valuation methods adopted by the Panel to review these claims.

2. Verification and valuation method

110. As indicated in paragraph 15 of Governing Council decision 9, the Panel's approach to verification and valuation of tangible property losses depends on the nature of the asset affected. Accordingly, the approach adopted varies for stock, cash, vehicles and other tangible property losses.

(a) Tangible property

111. In the case of compensable tangible property losses, as in the case of real property losses, the Panel identifies the existence of the property and the claimant's interest therein at the time of the loss. The Panel also reviews the evidence submitted to establish the fact of loss.

112. The Panel then reviews whether the claim is for costs incurred to repair or replace the asset, diminution in the value of the asset or estimated repair costs.

113. For claims based on repair or replacement costs incurred, the method adopted is similar to the method used for verifying real property losses. Accordingly, proof of payment is reviewed and the claim adjusted for any unsupported payments. The claims are reviewed to verify whether adjustments have been made to reflect applicable depreciation, maintenance, or betterment. Where the claimant has not made the necessary adjustments to the claims, the Panel makes these adjustments in the manner described above for real property claims. (See paras. 92-101, *supra*.)

114. In cases where claims are based on a valuation opinion or estimate, the Panel tests the valuation using an alternative review method. In the first instalment claims, the net book value method has been used for most valuation-based claims. In such cases, the Panel reviews the audited accounts or other documents provided to establish the cost and date of

acquisition of the asset. Where the accounts are unaudited or materially qualified, the Panel adjusts the claims for a "risk of overstatement". The claimant's calculation of depreciation is reviewed for reasonableness and the claim adjusted if necessary. Finally, the Panel checks whether, based on the cumulative effect of the evidence submitted, any further adjustment is warranted.

115. In the case of claims based on a valuation opinion or estimate, such as Al-Fulaij United Group Company for General Trading & Contracting, Al Sabah Trading and Contracting Co. - (W.L.L.), and Jawad & Haider Y. Abdulhasan Company, the Panel seeks evidence of the independence of the valuer or contractor providing the opinion or estimate. For valuation opinions, the Panel reviews the valuer's qualifications, the basis of valuation adopted and the appropriateness of the valuer's instructions. The Panel compares the valuation provided with alternative valuation methods and applies the most appropriate method of valuation based on the circumstances of the loss. For example, in the case of Al-Fulaij United Group Company for General Trading & Contracting, a net book value method was applied because of the lack of evidence relating to the valuer's independence and experience with the valuation techniques used. For claims based on a cost estimate, the Panel verifies whether any betterment has been included in the estimate.

116. In all cases where the claim for loss of tangible property is based on a valuation opinion or estimate, the Panel seeks justification for the claimant's failure to carry out any repairs or replacement. Where no reasonable justification is provided, the Panel adjusts the claim for a "risk of overstatement". Here too, the Panel verifies whether, based on the cumulative effect of the evidence submitted, any further adjustment is warranted.

(b) Stock

117. The methods of verification and valuation applied to stock losses and losses of goods in transit are similar. The Panel seeks evidence demonstrating the existence of stock or goods in transit on 2 August 1990 or on the date of loss if later.

118. In the Panel's view, the best evidence to prove the existence of stock is a stock taking attended by the claimant's independent accountants shortly before the date of loss. Noting that it is unlikely that many claimants would have such evidence, the Panel accepts a "roll-forward" calculation based on an earlier stock taking together with a calculation supported by documentary records of additions and withdrawals during the intervening period.

119. A "roll-forward" calculation uses, as a starting point, the closing stock balance reflected in the claimant's audited accounts for the fiscal year immediately preceding Iraq's invasion of Kuwait. (These accounts are generally for the year ended 31 December 1989.) To this closing stock

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value, the Panel adds stock purchases made during the intervening period, i.e., up to 2 August 1990. The stock purchases are verified with supporting invoices or other purchase documents, where available. The Panel then deducts the cost of goods sold (derived from the sales for the intervening period). The cost of goods sold figure used by the Panel is based on the claimant's historical results as reflected in the claimant's audited accounts for the years preceding Iraq's invasion of Kuwait. Finally, the Panel deducts any stock remaining after the liberation of Kuwait. Where the evidence submitted does not allow the Panel to carry out a "roll-forward" this shortcoming is regarded as creating a "risk of overstatement".

120. In the case of goods in transit, the Panel seeks copies of certificates from Kuwaiti port authorities or letters from shipping agents to establish the existence, ownership and loss of goods in transit. Trade documents (such as letters of credit and invoices) are reviewed to corroborate the asserted value of the goods in transit. In such cases, the Panel also reviews dates of shipment, modes of transport and other shipment details to determine whether the goods claimed to have been lost in transit were in Kuwait prior to the imposition of the trade embargo and related measures or whether the goods in transit were lost as result of the trade embargo and related measures. (See, for example, Governing Council decision 15, para. 9(III)(ii).)

121. Any unsupported elements of such claims are disallowed. The Panel also reviews the basis of valuation of stock and goods in transit for reasonableness (e.g., valuation at the lower of original cost or net realizable value).

122. Having established the existence and value of the stock and goods in transit, the Panel checks the claims against historical results. In the case of stock losses, specific areas considered are historical profit margins achieved by the claimant, exceptional stock write-offs or restocking costs and provisioning in the audited accounts. If required, the Panel adjusts the claim to a level consistent with historical results. In cases where the Panel identifies inconsistencies between the asserted claim value and the historical results of the business and is unable to make an actual adjustment because of evidentiary shortcomings, the Panel adjusts the claim to offset the "risk of overstatement" created by these inconsistencies.

123. The Panel then reviews the stock claims for overall reasonableness. Where the levels of stock allegedly lost are based on a quantity materially higher than the average levels held by the claimant prior to Iraq's invasion and occupation of Kuwait, the Panel initially seeks justification for such stock build-up, e.g., by reference to seasonality or documented change in demand. Where no reasonable justification for the stock build-up is provided, the Panel adjusts the claim to the average stock levels demonstrated prior to Iraq's invasion and occupation of Kuwait.

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124. In addition to comparing stock levels to average holdings prior to the date of loss, it is also necessary to compare stock levels with historical sales volumes to identify whether the levels of stock held are reasonable or whether there is evidence of over-stocking. The Panel directs its expert consultants to compare the volume of lost stock with industry stocking standards common in Kuwait and the Middle East. This comparison allows the Panel to determine acceptable levels of inventory for each claimant and to adjust claims for over-stocking.

125. Next, the Panel seeks to confirm that the claimant has considered obsolescence in the calculation of its loss and to verify that the levels of obsolescence applied by the claimant are reasonable for the nature of stock allegedly lost. Where claimants have not considered any obsolescence or where claimants have under-provisioned losses due to normal obsolescence, damage or deterioration, without providing any reasonable explanation for this, the Panel adjusts the claims to reflect obsolescence rates applicable to the nature of the stock lost.

126. Finally, the Panel verifies whether the cumulative evidentiary value of the documents presented warrants any further adjustment.

(c) Cash

127. Due to the mobility of the asset involved, cash loss claims present a greater potential for overstatement than other categories of property claims. As a result, the evidence submitted in support of cash claims is subject to the highest level of review, regardless of the amount claimed.

128. The Panel reviews the statement of claim and supporting documents to verify whether all the circumstances of the loss appear credible and whether any part of the cash lost could have been recovered (e.g., in cases where claims are for loss of payment instruments other than coins and paper currency.)

129. The Panel seeks credible and contemporaneous records of cash on the premises, such as cash books, bank statements, and daily cash deposits and withdrawals. In this connection, the Panel regards the Kuwaiti claimant's audited post-liberation accounts of cash loss merely as corroborative evidence of the loss, given the nature of the loss and the qualified and uncertain circumstances in which such losses are generally reported to have been reviewed by the claimants' auditors. In many cases, the auditors allege that the cash loss reported as an exceptional item in an "E4" claimant's post-liberation accounts is based on statements by the claimant or its employees and cannot be subject to independent verification.

(d) Vehicles

130. The first stage in the review of vehicle loss claims is to identify whether the claim is for a total loss of the vehicle or for repair costs. If the claim is for repair costs, the Panel reviews the claim by applying

the methodology developed for tangible property losses. (See paras. 111-116, supra.)

131. In the case of total loss of a vehicle, the Panel relies on the vehicle registration cancellation certificates ("deregistration certificates") issued by the Government of Kuwait to establish the existence of the vehicle before Iraq's invasion and to establish the claimant's interest therein.

132. The mobility of title to an asset such as a vehicle means that a simple proof of purchase prior to 2 August 1990 cannot constitute sufficient proof of ownership by the claimant at the time of Iraq's invasion of Kuwait. The Government of Kuwait informed the secretariat that the "deregistration certificates" issued by its Traffic Department are evidence of the legally registered owner of the vehicle. Further, the Panel notes that the procedures adopted by the Kuwaiti Traffic Department regarding the inability to re-register or transfer the ownership of the vehicle without written confirmation from PAAC, that the vehicle is not included in the claim of the registered owners(s), strengthens the evidentiary value of such certificates. As a result, the Panel is of the view that claims for loss of vehicles cannot be compensated in the absence of an official "deregistration certificate" issued by the Government of Kuwait.

133. However, "deregistration certificates" are regarded as proof of loss only where the fact of loss is also supported by witness statements or other records (e.g., the claimant's post-liberation accounts recording the loss of vehicles as an extraordinary loss).

134. In cases where there is a discrepancy between the name of the claimant and the name in the "deregistration certificate", the Panel considers the reasons for such discrepancy. For example, the Panel notes that it was common in Kuwait for vehicles operated by a company to have been purchased in the name of one of its owners, directors or employees. In such cases, the Panel directs the secretariat to carry out a separate check to ensure that said owner, director or employee has not filed a duplicate claim for the vehicle in question.

135. The value of the vehicle loss is verified for reasonableness by the Panel. In its review of vehicle claims, the Panel compares the loss value asserted by the claimant with comparative vehicle values in Kuwait as set out in a Motor Vehicle Valuation Table (the "M.V.V. Table") provided to the Commission along with a report regarding claims for motor vehicles dated 20 July 1994, submitted by PAAC. The Panel notes that in the case of vehicles, factors other than the make, model and year, e.g., specific use or features or flaws, affect the value of the vehicle. Accordingly, where a vehicle value asserted by a claimant is lower than the M.V.V. Table value, the Panel does not increase such claims but treats the M.V.V. Table value as representative of the maximum compensable value for a vehicle of the same make, model and year. (See "Report and recommendations made by

the Panel of Commissioners concerning part one of the first instalment of individual claims for damages above US$100,000 (category 'D' claims)" (S/AC.26/1998/1) (the "First D Report"), paras. 267-272.)

3. Evidence submitted

(a) Tangible property

136. Most claimants in this instalment submitted audited accounts to establish the existence, ownership and value of the tangible assets damaged or lost as a direct result of Iraq's invasion and occupation of Kuwait. In establishing the fact and cause of loss, claimants relied on assertions in their statement of claim and witness statements. These assertions were generally corroborated by additional documents, such as photographs and independent survey reports. The Panel also relied on the claimants' audited accounts for the years 1990 and 1991. These accounts showed the losses of tangible property as extraordinary losses that were a direct result of Iraq's invasion and occupation of Kuwait, and as such provided an additional independent verification of the loss.

(b) Stock

137. For most claimants the existence, ownership and value of stock lost was supported by copies of the claimant's audited accounts, original inventory purchase invoices and "roll-forward" calculations.

138. Some claimants provided additional evidence such as copies of stock records, sales invoices, payment records, pre-loss audited stock taking and insurance records. Abdul-Jaleel Mahmoud Al-Baqer & Sons Co. and Gulf Cows Breeding Company W.L.L. also provided copies of receipts issued by Iraqi authorities for livestock commandeered during the initial months of Iraq's occupation of Kuwait, and deducted these "sales" when presenting their total claim. The fact of loss was generally supported by witness statements, audited accounts and photographs of the damage caused.

139. Successful claims for loss of goods in transit related to goods that were held in Kuwait on the day of Iraq's invasion and that were subsequently lost. These claimants were able to establish the ownership, existence and loss of the goods by providing certificates issued by the Kuwaiti port authorities or shipping agents.

140. In a few cases, claimants also relied on copies of invoices from suppliers, letters of credit, bills of lading, bank debit advices and customs clearance forms to establish their losses. Accordingly, if such claimants were unable to provide more direct evidence of the loss (such as port authority or shipping agent certificates), the Panel allowed the claim if it was apparent that, based on shipping dates, modes of transport used and other shipping details, the loss did not occur due to the trade embargo or related measures.

(c) Cash

141. Successful claimants alleging cash losses were able to substantiate their claims by providing, among other things, documents establishing cash held on 2 August 1990, previous month-end listings, copies of daily bank deposit statements, cash flow registers and monthly sales ledgers. Claimants supplemented this evidence with photographs of the looted safes and witness statements and such claimants also established that they were engaged in the types of businesses expected to hold, on their premises, the amount of cash claimed.

142. Claimants for whom no award has been recommended generally sought to rely only on witness statements without providing any additional documents substantiating their claims.

(d) Vehicles

143. Virtually all claimants were able to establish their ownership of lost vehicles, on the date of the loss, by providing copies of "deregistration certificates" issued by the Government of Kuwait. The fact of loss was generally established by the "deregistration certificates" together with additional substantiating documents such as witness statements describing the circumstances of the loss and audited accounts recording the loss of vehicles as an extraordinary item.

144. Where claimants did not provide deregistration certificates or where the name of the owner in the deregistration certificate could not be linked to the claimant or its owners, directors or employees, the Panel disallowed the claim. However, in one case involving the loss of fork lifts, the Panel allowed the claim based on witness statements and copies of the sale contract and purchase receipt for the vehicles, as these types of vehicles were not required to be registered in Kuwait.

145. The asserted values of the vehicles lost were separately verified by the Panel against vehicle values contained in the M.V.V. Table or, for vehicles not listed in the M.V.V. Table, against other third party estimates. In the case of third party estimates the Panel tested these estimates by applying alternative valuation methods such as the net book value and depreciated replacement cost methods.

D. Income-producing property

146. Three first instalment claims allege a loss of income-producing property. Musaad Al-Saleh Travel Company Hamad Musaad Al-Saleh and Partners W.L.L. asserts a claim for loss of income-producing property, alleging a permanent diminution in sales after the liberation of Kuwait compared with sales prior to Iraq's invasion. The claimant computes its loss by projecting a diminution in cash flows for a period of ten years from 31 December 1991 and discounting this diminution (by a factor of 4.5 per cent) to arrive at the present value of said cash flows. The same

claimant also raises a separate claim for loss of profits between August 1990 and December 1991.

147. Musaad Al-Saleh & Sons Investment Group W.L.L., raises a similar claim for loss of income-producing property, alleging it suffered a permanent diminution in rental income due to reduced occupancy levels in its Kuwaiti properties. Here, the value of the loss is calculated by discounting a projected diminution in cash flows over 25 years (applying a 4 per cent discount factor). Again, a separate claim for loss of profits is also raised, but in this case, for the period between August 1990 and December 1992.

148. The Panel determines that both these claims for loss of income-producing property are not compensable for the following reasons. To the extent that these two claimants suffered a loss of income as a direct result of Iraq's invasion and occupation of Kuwait, the claimants have been compensated under the loss of profits category. Additionally, the claimants fail to establish why the losses asserted under this category, based on cash flows projected for ten years and 25 years, will not be recouped, and how losses projected over these ten and 25 year periods will actually be suffered as a direct result of Iraq's invasion and occupation of Kuwait. Further, the Panel notes that the discounted cash flow method of valuation is a measure of the value of a business as whole on a going concern basis. Where a claimant has separately been compensated for loss of assets and loss of profits, any additional compensation based on a discounted cash flow basis would include a duplication of these loss elements.

149. Jawad & Haider Y. Abdulhasan Company claims it suffered a compensable loss when it sold its interest in an United States-based investment company. (The claim was submitted as a claim for loss of business transaction or course of dealing and was reclassified on review to a claim for loss of income-producing property.) This claimant states that it was forced to sell this interest because the United States-based company was facing bankruptcy, allegedly arising from lack of confidence in Kuwaiti ownership. This lack of confidence is stated to be a direct result of Iraq's invasion and occupation of Kuwait.

150. The claimant relies on an agreement dated seven months after the liberation of Kuwait establishing that it did sell shares in an United States-based company on the date of the agreement. The claimant does not provide any evidence to support the claimed reason behind the sale of shares or to establish that the sale of shares was forced in any manner. The claimant's pre-invasion audited accounts are materially qualified and the claimant's auditor has declined to express any opinion on the accounts. The accounts for the years 1990 and 1991 show a loss on the sale of shares as an extraordinary item. However, these accounts also contain material qualifications and merely establish a difference between the historical cost of the shares and their selling price. The claimant provides no

evidence of the carrying value of the investment prior to Iraq's invasion of Kuwait or at the time of the sale.

151. Given the nature of the underlying asset, the Panel finds no basis on which to verify or value the loss claimed. The Panel accordingly determines that this claim is not compensable as the claimant has failed to provide appropriate evidence sufficient to establish the circumstances and the amount of the claimed loss. As the facts alleged are not established, the Panel does not need to address the issue of whether the loss is a direct result of Iraq's invasion and occupation of Kuwait.

E. Payment or relief to others

152. Two claimants in this instalment submitted claims for payment or relief to others. The claim of the Buildings and Roads Company is for amounts paid by the claimant to its general manager and his family for salary and airfare. Al Omar Technical Company raises a claim for petty cash that was reportedly distributed among its employees and their families to help them evacuate Kuwait.

1. Compensability

153. For amounts claimed by way of regular (and unexceptional) salary payments, the Panel finds that such payments would have been incurred as regular expenses in the normal course of events. As the claimant seeking compensation for the salary expenses also raised a claim for loss of profits, the Panel finds that compensating regular salary expenses relating to the period for which a loss of profits claim has been raised duplicates compensation (as the regular salary expenses are considered in the loss of profits calculation). (See First F Report, paras. 85 and 89.)

154. Accordingly, the Panel recommends disallowing the claim of the Buildings and Roads Company for salary expenses as the amount paid is not shown to be an extraordinary expense incurred as a direct result of Iraq's invasion and occupation of Kuwait, and as the salary paid relates to the period for which loss of profits has been compensated.

2. Verification and valuation method

155. After identifying which items can be regarded as compensable, the Panel verifies whether the claim is supported by proof of payment for all items claimed. The type of evidence expected of claimants is determined by the nature of the payment. For example, in the case of airfares borne by a claimant to evacuate or return staff, the Panel expects claimants to provide copies of the airline ticket (as the ability to produce such documents will not have been affected by Iraq's invasion and occupation of Kuwait). The Panel disallows amounts claimed that are not supported by appropriate documentary evidence to prove that payments were actually made by the claimant.

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156. Where claims relate to payments to or costs incurred on behalf of individuals, the Panel verifies whether the individuals have been identified by means of their passport or other equivalent identification numbers and documents. The Panel then verifies whether duplicate claims have been raised, under other categories of claims before the Commission, by the same individuals for the same losses. Where the individuals have been generally identified but the claimants have not provided passport and other identification details, these shortcomings create a "risk of overstatement".

157. Finally, the Panel verifies whether the payments are in the nature of loans or advances. All loans are disallowed by the Panel as they are, by their very nature, repayable.

3. Evidence submitted

158. In the case of the Buildings and Roads Company, the claimant has provided neither airline tickets nor the names of all the passengers for whom the airline tickets were allegedly bought. The Panel is unable to verify the payment from any other documents. Given the lack of evidence, the Panel does not recommend any compensation to this claimant for this loss.

159. In the case of Al Omar Technical Company, the claimant has provided no receipts or other documents to establish that the payments were made. In this case also, the Panel is unable to verify the payment from any other documents. Accordingly, the Panel finds that the evidence presented does not support the loss claimed.

F. Loss of profits

160. Claims for loss of profits were raised in 38 of the first instalment claims for an aggregate asserted value of over KD 24 million (approximately US$83 million).

1. Compensability

161. The first instalment claims raise four significant legal and factual issues. First, should benefits received under a post-liberation debt settlement programme, introduced by the Government of Kuwait, affect the assessment of loss of profits claims? Second, should windfall or exceptional profits earned by claimants in the period immediately following the liberation of Kuwait be considered in evaluating loss of profits claims? Third, for what period should a loss of profits claim be awarded? Finally, where claimants were engaged in various lines of business but sought to claim for loss of profits in relation to their profitable lines of business only, are the claims representative of the loss actually suffered by such claimants? A brief discussion of these issues and the Panel's conclusions thereon is set out below.

(a) The post-liberation Kuwaiti Difficult Debt Settlement Programme

162. At the time of Iraq's invasion of Kuwait, Kuwaiti banks and financial institutions had advanced substantial loans to corporations in Kuwait. Subsequent to the occupation, the Government of Kuwait found that a significant portion of this debt had become or was very likely to become non-performing. Accordingly, to alleviate the crisis faced by Kuwait's banking and financial sector and to facilitate the repayment of the debt, the Government of Kuwait introduced a Difficult Debt Settlement Programme in 1992 and 1993. This programme was introduced under Kuwaiti "Decree-Law No. 32 of 1992 on Dealing with the Status of the Banking and Financial Sectors" ("Kuwaiti Law 32 of 1992") and Kuwaiti "Law No. 41 of 1993 - State Purchase of Select Debts and Collection Procedures" ("Kuwaiti Law 41 of 1993").

163. Under the Difficult Debt Settlement Programme, the Central Bank of Kuwait purchased from Kuwaiti banks and financial institutions, the debt owed to these banks and institutions by Kuwaiti individuals and corporations as well as the debt owed by citizens of Gulf Cooperation Council States. The debt purchased was outstanding on 1 August 1990 and was purchased from the selling banks and financial institutions against floating-rate Government bonds issued for that purpose. (The annual interest rate on these bonds was initially set at 5 per cent. However, this rate is determined by the Central Bank of Kuwait based on the cost of funds in the local market.) The purchase value of the debt was computed in accordance with a formula set out in the Kuwaiti laws under which the Programme was introduced and administered. In general terms, the debt purchase value was computed at the book value of the outstanding debt on 1 August 1990, less provisions, reserves and certain similar sums. (See Kuwaiti Law 32 of 1992, article 4.)

164. Subsequent to the purchase of this debt, the debt was required to be settled by the concerned debtors under one of two settlement methods:

(a) a spot settlement scheme under which only a part of the original debt was required to be repaid for full settlement of the debt; and

(b) a staggered settlement scheme under which the purchased debt was required to be repaid in twelve annual instalments from 1995 onwards.

165. The settlement mechanism waived interest on the debt, except in cases of default. Additional discounts were also offered on the amount to be repaid in cases where the debtors made advance settlements. By Kuwaiti Law 41 of 1993, debt settled after the liberation of Kuwait, and before the effective date of the Difficult Debt Settlement Programme, was also bought under the programme. If any repayment made during this interim period was in excess of the amount required to be paid under the Difficult Debt Settlement Programme, the additional amounts paid were refunded to the debtors.

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166. The Panel determined that, by a law dated 11 August 1986, the Government of Kuwait introduced a similar programme, the Difficult Credit Facilities Settlement Programme, to relieve the problems created by the Souk al-Manakh (stock market) crash that occurred between 1981 and 1983. This Difficult Credit Facilities Settlement Programme was in effect on 1 August 1990 and accounted for a substantial portion of the outstanding debt that was subsequently purchased under the Difficult Debt Settlement Programme.

167. The Panel notes that it is not possible to differentiate between debt that became unpayable as a result of the stock market crash, debt that became unpayable as a result of Iraq's invasion and occupation of Kuwait, and debt that became unpayable as a result of the economic consequences of the trade embargo and related measures. It appears that the economic difficulties that were sought to be addressed by the Difficult Debt Settlement Programme had been created mainly by the earlier Souk al-Manakh crash and that these problems had been aggravated by Iraq's invasion and occupation of Kuwait and by the trade embargo and related measures and the economic situation caused thereby. By a letter dated 26 August 1998, PAAC informed the secretariat that it has no knowledge of any claim submitted by the Government of Kuwait or any agency or instrumentality thereof (including any organization or Ministry of the Government of Kuwait) for or in relation to the Difficult Debt Settlement Programme.

168. The issue raised is whether, in such circumstances, the Difficult Debt Settlement Programme can be regarded as compensating the claimants whose debt was purchased under this programme, i.e., whether the benefits of interest waivers and discounted repayment offered under the Difficult Debt Settlement Programme should otherwise be considered in evaluating the actual losses suffered by claimants who received these benefits post-liberation.

169. On a review of the context in which the expression "compensation" has been used by the Governing Council, the Panel is of the view that the expression is intended to refer to payments made for losses suffered as a direct result of Iraq's invasion and occupation of Kuwait, i.e., compensable losses. (See Governing Council decision 7, para. 25; and "Further Measures to Avoid Multiple Recovery of Compensation by Claimants" (S/AC.26/1992/13).)

170. The Panel finds that the benefits offered by the Government of Kuwait under the Difficult Debt Settlement Programme are not based on the nature of loss suffered or the extent of damage suffered by claimants either during or as a result of Iraq's invasion and occupation of Kuwait. Eligibility to participate in the Difficult Debt Settlement Programme was not contingent on any damage, injury or loss suffered by claimants.

171. Although the Difficult Debt Settlement Programme requires claimants receiving compensation from the Commission to first apply that compensation to repaying any outstanding debt under the programme, the outstanding debt

refers only to the discounted amounts payable under the Difficult Debt Settlement Programme and not to the original debt that may have been outstanding on 1 August 1990. The amount required to be repaid under the Difficult Debt Settlement Programme is based on the amount of debt outstanding as on 1 August 1990 and the scheme under which the debtor elects to make repayments - not on any loss or damaged suffered by any claimants.

172. The benefits offered under the Difficult Debt Settlement Programme cannot therefore be regarded as "compensating" any loss or damage suffered as a direct result of Iraq's invasion and occupation of Kuwait.

173. The Panel also notes from its review of an official translation of Kuwaiti Law 41 of 1993 that the Difficult Debt Settlement Programme was introduced by the Government of Kuwait to help restore the economy, financial stability and the banking system in Kuwait. Kuwaiti Law 41 of 1993 indicates that the programme was introduced to address the "solvency problem" that "reflected negatively on the economic condition in general" and adversely affected the financial position of the banking and financial sector. The explanatory statement to Kuwaiti Law 41 of 1993 also contains the following clarification:

> "This Law ... was drafted out of concern to set the stipulations and rules that guarantee the State collection of purchased debts according to regulations that safeguard public funds, and at the same time give serious clients willing to settle their purchased debts the appropriate facilities which entail the least cost possible to be encumbered by public funds, in a manner enabling the citizens to quickly settle their debts so that matters revert back to normalcy as soon as possible."

174. As stated above, these problems were mainly caused by events that long preceded Iraq's invasion of Kuwait, i.e., the Souk al-Manakh crash. While Iraq's invasion and occupation of Kuwait and the trade embargo and related measures and the economic situation caused thereby undoubtedly aggravated these problems, the Panel concludes that since the Difficult Debt Settlement Programme itself is not related to Iraq's invasion and occupation of Kuwait, benefits offered thereunder cannot be regarded as compensating losses suffered as a direct result of Iraq's invasion and occupation of Kuwait. This determination is made with specific reference to debtors whose debt was purchased under the Difficult Debt Settlement Programme. At this stage, the Panel makes no determination with reference to the possible impact of this programme on the claims of banks and other financial institutions that originally advanced the debt purchased under the programme.

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(b) Windfall profits

175. When compared with their profits for similar periods prior to the invasion, certain claimants show unusually high profits in the period immediately following the end of Iraq's occupation of Kuwait.

176. Where the Panel encounters exceptional profits in the claimant's financial statements for the period immediately following Iraq's occupation of Kuwait, the Panel investigates the reasons for this increase in profits. Where the increase is due to non-operational items (e.g., benefits under the Difficult Debt Settlement Programme referred to earlier), the effect of such exceptional gains is ignored. However, there are a few cases where the claimant's financial statements show an extraordinary rise in operating profits in the period immediately following the end of Iraq's occupation of Kuwait.

177. Within this subset of claims, the profits earned by most claimants can be explained from a review of their pre-invasion accounts as part of an increasing trend in earnings (again unrelated to Iraq's invasion and occupation of Kuwait).

178. However, in some cases, a review of the evidence submitted reveals that there is a high likelihood that a direct cause for the rise in profits was Iraq's invasion and occupation of Kuwait rather than any specific efforts undertaken by the claimant to develop its business. For example, automobile dealerships and construction companies in Kuwait could show such windfall profits in the period immediately following the liberation of Kuwait because the damage caused during the period of the occupation resulted in a sharp increase in demand for the products and services offered by such companies post-liberation.

179. In measuring the loss actually suffered by such claimants the Panel is of the view that it is not appropriate to compensate a claimant for losses suffered as a direct result of Iraq's invasion and occupation of Kuwait without considering extraordinary gains earned as a direct result of the same invasion and occupation.

180. However, the Panel finds that, while it is possible to identify lines of business where such gains can be expected, it is extremely difficult to identify the extent to which such gains are a direct result of Iraq's invasion and occupation of Kuwait.

181. Given the judgement inherent in the quantification of loss of profits claims generally, where (i) the evidence presented provides no reasonable explanation for an extraordinary and unsustained increase in post-liberation operating profits, (ii) the claimant makes no adjustment to reflect such windfall profits, and (iii) the claimant engages in a line of business where windfall profits are expected, the Panel regards such claims for loss of profits as presenting a "risk of overstatement". The Panel adjusts these claims to offset the "risk of overstatement" so that, in

accordance with Governing Council decision 9, paragraph 19, the adjusted claim represents with reasonable certainty the loss of profits actually suffered as a direct result of Iraq's invasion and occupation of Kuwait.

(c) Period of loss

182. The first instalment presents loss of profits claims made for varying periods of time. The Panel determines, in each case, the period of time for which a claim for loss of profits is a direct loss resulting from Iraq's invasion and occupation of Kuwait. This determination is made both where claimants did, and where claimants did not, resume operations after the liberation of Kuwait.

183. Paragraph 17 of Governing Council decision 9, states that "[i]n the event that the business has been rebuilt and resumed, or that it could reasonably have been expected that the business could have been rebuilt and resumed, compensation may only be claimed for the loss suffered during the relevant period". Paragraph 7 of Governing Council decision 15, in clarifying the earlier decision 9, states the following:

> "[I]n the case of a business which has been, or could have been, rebuilt and resumed, compensation would be awarded for the loss from the cessation of trading to the time when trading was, or could have been, resumed. In the case of a business ... which it was not possible to resume, the Commissioners would need to calculate a time limit for compensation for future earnings and profits, taking into account the claimant's duty to mitigate the loss wherever possible."

184. The "E2" Panel of Commissioners, in dealing with loss of profits claims associated with the destruction of businesses that were, or could have been, rebuilt, interpreted the relevant Governing Council decisions to mean that "compensation for lost business in such a case may be awarded for the period between the cessation of operations and the time when the business reasonably could have resumed production at the pre-invasion capacity". (See First E2 Report, para. 242.) Accordingly, the standard applied is to allow compensation for the period until the claimant could have recommenced operations at pre-invasion capacity (and not necessarily the period within which the claimant could have achieved pre-invasion levels of profitability).

185. The Panel concurs with the "E2" Panel's approach in dealing with the period for which loss of profits claims can be compensated. However, the Panel believes this approach can only be applied to businesses that resumed operations after the liberation of Kuwait.

186. In relation to businesses that did not resume operations after the liberation of Kuwait, the Panel was particularly mindful of the Governing Council's directions in decision 15. (See para. 183, supra.) Claimants who did not resume operations generally explained their inability to resume trading as being due to financial difficulties following Iraq's occupation.

Specific reasons for these financial difficulties were generally not explained. However, a variety of possible causes was often identified, including pre-invasion financial problems, the trade embargo and related measures and the economic situation caused thereby.

187. Based on the above, the Panel concludes that "E4" claimants who did not resume operations after the liberation of Kuwait can be compensated for loss of profits during the seven month period of Iraq's invasion and occupation of Kuwait, as this period clearly constitutes a "separate and distinct" cause for the claimant's loss of profits. However, for such claimants to receive loss of profits awards for any extended period following the liberation of Kuwait, the claimants must clearly demonstrate that a "separate and distinct" cause for their inability to resume operations is Iraq's invasion and occupation of Kuwait.

(d) Claims excluding other lines of business

188. Certain claimants who were engaged in more than one line of business prior to Iraq's invasion of Kuwait have claimed for "loss of profits" in relation to some lines of business, and excluded other (less remunerative) business operations from their calculation. The issue before the Panel is whether loss of profits can be computed selectively on the basis of some lines of business without considering all the lines of business in which the claimant is engaged.

189. Paragraph 16 of Governing Council decision 9, states that the conclusions on compensating losses for income-producing properties "are based on the premise that the business affected was a going concern, i.e. it had the capacity to continue to operate and generate income in the future". Paragraph 17 of the same decision goes on to state that "[i]n principle, Iraq is liable to compensate for the loss of a business or commercial entity as a whole resulting from Iraq's invasion and occupation of Kuwait". Although these conclusions are made with regard to income-producing properties, the Panel finds these conclusions and propositions relevant to claims for loss of profits. Subsequent paragraphs, e.g., paragraph 19, of the same section of decision 9 also deal with the calculation of loss of earnings or profits.

190. The Panel concludes that a key premise for compensating loss of profits is that the "business affected" should have been a "going concern". A single line of business may indeed amount to a "going concern" within the meaning of Governing Council decision 9. However, this fact alone does not form the basis of compensating a claimant, unless the single line of business is the "business affected". In other words, the Panel understands the expression "going concern", as used in decision 9 to be qualified by the expression "business affected".

191. The Panel concludes that, where a claimant is engaged in more than one line of business, the loss of profits calculation should be based on all "affected" lines of business. A claimant may have been engaged in two

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lines of business, one of which was profitable (e.g., real estate) and the other non-profitable (e.g., manufacturing or dealing in securities). If both businesses were affected, then a claim based only on the profitable line of business is not representative of the loss actually suffered by the claimant. If, for example, the losses incurred by the loss-making division actually decreased as a direct result of Iraq's invasion and occupation of Kuwait, then ignoring the performance of the loss-making division overstates the loss actually suffered by the claimant.

192. Another relevant consideration is whether the line of business used for the claim is unrelated to the other lines of business, i.e., is the line of business claimed for a distinct and separate "going concern"? For example, a travel agency may raise a claim based only on its airline passenger ticket sales, without considering its package tour and cargo handling operations. In such a case, because the various lines of business are closely associated with one another, the Panel finds it is necessary to consider the business as a whole when computing loss of profits.

193. Based on the above, the standard developed by this Panel to compensate claims for loss of profits is based on a review of the "business affected". The Panel concludes that a loss of profits award that places the claimant, as far as can be determined with reasonable certainty, in the position the claimant would have been in, but for the invasion and occupation, is the most appropriate measure of profits lost by the business affected.

2. Verification and valuation method

194. Pre-invasion and post-liberation audited accounts are fundamental to establishing a claim for loss of profits. A failure to submit audited accounts (without reasonable explanation for the omission or alternative information on which the claim can be verified) results in the claim being disallowed by the Panel.

195. The second stage of the verification and valuation process reviews the calculation of the claim. If necessary, claims are adjusted for inaccurate extraction of figures from underlying evidence or for arithmetical errors.

196. The third stage reviews key areas of possible overstatement. The first key area is the period for which the loss of profits claim is raised. As discussed above, the Panel adjusts claims to the period for which loss of profits is a direct result of Iraq's invasion and occupation of Kuwait. (See paras. 182-187, supra.)

197. A claim for loss of profits cannot be solely based on revenues lost. It must be matched with corresponding expenses. Claims based on gross revenues or gross profit margins are therefore adjusted to net values (operating revenues less operating expenses).

198. The next stage tests the claim against the claimant's historical results, excluding any extraordinary items shown in these historical results. If the adjusted amount exceeds the average profits achieved in similar fiscal periods preceding Iraq's invasion of Kuwait, the Panel adjusts the claim based on the claimant's historical results. If the pre-invasion results indicate a trend of increasing or decreasing profits, the adjustment made by the Panel accommodates the effects of such trend.

199. The Panel then reviews areas of possible overstatement of the actual loss suffered. The claim is reviewed for seasonality in profit. Where the business exhibits seasonal variations and the claimant provides sufficient information to enable appropriate adjustments, these are made. However, in businesses demonstrating seasonality, where the claimant has provided no information to allow a compensating adjustment, the claim is regarded as presenting a "risk of overstatement".

200. The claim is then reviewed for exceptional or highly volatile results (for example, increased revenues due to non-recurring or extraordinary items such as the sale of capital assets). Exceptional items are removed from the basis of computation and the claim recomputed based on sustainable items. However, in cases where the magnitude of the exceptional items cannot be identified, the claim is seen as presenting a "risk of overstatement".

201. Next, the claimant's post-liberation results are reviewed to determine whether the claimant has enjoyed any windfall profits as a direct result of Iraq's invasion and occupation of Kuwait. If such profits are evident, the claim is adjusted in the manner described in the preceding portions of this report dealing with windfall profits. (See paras. 175-181, supra.)

202. Finally, the cumulative value of the evidence submitted is considered to determine whether any further adjustment is warranted.

3. Evidence submitted

203. Virtually all first instalment claims included annual audited accounts for the period 1987-1991 and based their claim for loss of profits on these accounts. Many claimants that resumed operations after the liberation of Kuwait also submitted annual audited accounts for 1992 and 1993.

204. Claims for businesses that resumed operations after the liberation of Kuwait but did not submit post-liberation accounts were regarded as presenting a "risk of overstatement", unless the omission to submit the accounts was sufficiently explained. (As noted above, the Panel's first procedural order dated 20 February 1998 requested all claimants in this instalment to submit copies of their annual audited accounts for 1988 to 1993.)

205. When a claimant sought to compute loss of profits on a basis other than the average profits in its pre-invasion audited accounts, the Panel reviewed the justification provided by the claimant for the alternative basis of computation. If the alternative basis of computation used by the claimant did not, in the Panel's opinion, accurately calculate the loss of profits sustained, the Panel recomputed the loss based on the historical financial performance of the claimant as indicated in paragraph 19 of Governing Council decision 9.

206. Claims based on one line of business were valued and verified applying the principles set out in paragraphs 188-193 above.

G. Receivables

207. Nine claimants in this instalment asserted claims for uncollectible receivables or "bad debts" aggregating over KD 3.9 million (approximately US$13.5 million). The majority of these claims were for sums owed by businesses or individuals located in Kuwait prior to Iraq's invasion.

1. Compensability

208. Most claimants sought compensation for debts that remained uncollected because debtors had not returned to Kuwait after liberation. The issue is whether the uncollected debt had become uncollectible as a direct result of Iraq's invasion and occupation of Kuwait.

209. Article 35(3) of the Rules states, inter alia, that category "E" claims "must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and amount of the claimed loss". Claims for debts that have become uncollectible should demonstrate, by documentary or other appropriate evidence, the nature and amount of debt in question and the circumstances that caused the debt to become uncollectible.

210. An unsupported assertion that all of a claimant's uncollected debts are ipso facto uncollectible as a direct result of Iraq's invasion and occupation of Kuwait is not sufficient to meet the requirements set out in article 35 of the Rules. The nature of evidence expected in this regard is discussed in the following section.

2. Verification and valuation method

211. In reviewing claims for uncollectible receivables, the Panel verifies the amount of debt claimed against accounting records and contemporaneous documents. The Panel reviews the normal level of bad debt encountered in the claimant's business to verify that the claimant is not seeking compensation for bad debt unrelated to Iraq's invasion and occupation of Kuwait. A claimant's failure to provide information as to the pre-invasion level of bad debt generates a "risk of overstatement" in the claim.

212. The Panel then reviews the period for which the claimant recognized the debt as outstanding prior to Iraq's invasion and occupation of Kuwait. To the extent the loss claimed relates to debt that would have been written off under international accounting practices prior to Iraq's invasion, the claim is disallowed. For all other receivables, the Panel seeks evidence that the invasion is a "separate and distinct" direct cause rendering such debt uncollectible. In cases where the claimant has not provided such evidence the Panel disallows the claim.

213. The Panel next verifies whether the claimant has provided evidence of attempts to recover the receivables and mitigate damage. The Panel does not regard a claim as sufficiently established where the claimant has not made any attempt to recover the receivables and has not provided any reasonable explanation of its failure to do so. In cases where the evidence provided suggests the likelihood of further recovery, the Panel reverts to the claimant for additional information on the outcome of subsequent recovery attempts.

214. Next, the Panel determines whether the claimant has demonstrated that its debtor's inability to pay is a direct result of Iraq's invasion of Kuwait. For example, if a claimant submits evidence that a debtor did not resume operations in Kuwait, the Panel recognizes that this could be due to various reasons. Where the evidence establishes that the debtor did not resume operations post-liberation as a direct result of Iraq's invasion and occupation of Kuwait, e.g., the debtor was rendered bankrupt as a direct result of the invasion and occupation, no further adjustments are made to the claim. However, if the evidence submitted does not clearly establish the reason for the debtor's inability to recommence operations, then there is a likelihood that there are multiple causes for the debt being uncollectible, including Iraq's invasion and occupation of Kuwait. (See First E2 Report, para. 232.) In such cases, the Panel then adjusts the claim to offset the "risk of overstatement", applying the principles set out in paragraph 9 of Governing Council decision 15, for situations in which there are additional causes for a loss.

215. Finally, the Panel reviews whether the cumulative effect of the evidence submitted raises any issues warranting further adjustment.

3. Evidence submitted

216. As discussed above, the Panel disallows claims that rely on mere assertions that uncollected debts are *ipso facto* uncollectible because the debtors did not return to Kuwait. For claims in this instalment that have been so disallowed, there is insufficient evidence supporting the debtors' inability to pay the debt or any attempt to recover the debt.

217. Globe Commercial Company raises a claim for loss of contract that relates to amounts owed by a company in Iraq, under contractual arrangements that date back to 1976. The Panel has reclassified this claim as relating to uncollectible receivables. Based on the claimant's own

statement of account, nearly 99 per cent of the amount claimed relates to amounts that should have been written off, under international accounting practices, even prior to 1990. No explanation is provided for the claimant's inability to recover these sums prior to Iraq's invasion of Kuwait. Accordingly, this portion of the debt is disallowed by the Panel. The evidence submitted to support the remaining portion of the claim cannot be reconciled with the loss asserted by the claimant. The Panel therefore does not recommend compensation for the remaining amount given the insufficient evidence submitted in support of the nature and value of the loss claimed. As the entire claim has been disallowed on evidentiary grounds, the Panel need not address the issue of whether the loss claimed is a direct result of Iraq's invasion and occupation of Kuwait or related to the trade embargo.

218. The claim of Union Trading Company Abdul-Razaq Al-Rozouki and Partner W.L.L. documents post-liberation attempts to recover its receivables in Kuwaiti courts. However, the claimant does not provide evidence establishing the age of the debt and the Panel has adjusted the claim to offset the "risk of overstatement" created thereby. M/s. Safwan International Co. W.L.L. provided court records that demonstrate its debtor's absence from Kuwait following the end of Iraq's occupation of Kuwait. The records are sufficient to establish that the debtor is presumed bankrupt as a direct result of the invasion and occupation. The Panel therefore recommends payment of this claim in full.

219. Musaad Al-Saleh & Sons Investment Group W.L.L. submitted certificates from the Kuwait Chamber of Commerce & Industry establishing that eight debtors did not resume business after the liberation of Kuwait. The Panel has allowed this claim to the extent it relates to sums owed by these eight debtors. The Panel has disallowed the remaining claim that is only supported by an assertion that the other debtors' inability to repay the debt is a direct result of Iraq's invasion and occupation of Kuwait. In arriving at its recommendation on the sums owed by the eight debtors, the Panel has adjusted the claim to offset the "risk of overstatement" attributable to the evidentiary shortcomings described in paragraph 214 above. The claim of Automated Multi Access Systems Co. K.S.C. relies on similar certificates, and this claim has therefore been similarly verified and valued by the Panel.

H. Restart costs

220. Two claimants in this instalment seek compensation for restart costs. In the case of Mobile Telephone Systems Company, the restart costs are for the cost of temporary equipment purchased when recommencing operations after the liberation of Kuwait and travel costs incurred at the time. In the case of Bait Awladona Company, the costs relate to certain post-liberation repairs and to salaries paid to employees for cleaning the claimant's showrooms.

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221. The amounts claimed as restart costs have been reviewed using methodologies applicable to other loss categories, e.g., loss of profits, loss of tangible property, or payment or relief to others. The two claims do not raise any new significant legal issues.

222. In the case of the cost of temporary equipment, purchased by Mobile Telephone Systems Company, the claim relates to satellite dishes that the claimant purchased following the liberation of Kuwait to facilitate communications during its restart of operations. The claimant states that it purchased five dishes and was able to sell three of the dishes. It claims the cost of the two dishes it was unable to resell. The claimant does not explain why it required five dishes as a direct result of Iraq's invasion and occupation of Kuwait or why it has been unable to sell the two remaining dishes. The Panel recommends no compensation for this portion of the claim as the claimant has provided no evidence of the need for these additional dishes, or that the purchase of the additional dishes was a direct result of Iraq's invasion and occupation of Kuwait. In relation to the travel costs claimed by this claimant, the Panel finds the claimant has not established that the costs are extraordinary items incurred as a direct result of Iraq's invasion and occupation, i.e., costs incurred over and above normal travel costs. Accordingly, in this case also, the Panel does not recommend any compensation.

223. In the case of Bait Awladona Company, the claimant does not establish that the salary payments made are extraordinary payments incurred as a direct result of Iraq's invasion and occupation, i.e., payments made over and above regular salary payments. As no incremental costs have been incurred, the salary payments claim is disallowed since such payments are considered in the loss of profit award recommended. Additional compensation for these payments would amount to double recovery. The claimant supports its claim for repair costs but does not take account of regular maintenance costs that would normally have been incurred. The recommended award is therefore arrived at after adjusting the claim for these maintenance costs.

I. Other losses

224. Bait Awladona Company and Carpets Industry Co. K.S.C. (Closed) seek compensation under this loss category for charges paid on letters of credit stated to have been cancelled as a direct result of Iraq's invasion of Kuwait. Neither claimant demonstrates that the amounts claimed are extraordinary amounts. A review of the claimants' accounts for the period between 1987 and 1990 reveal that the claimants regularly bore such cancellation charges, in excess of the amount claimed, prior to Iraq's invasion of Kuwait. In one case the claimant's auditor treats the cancellation charges claimed as regular banking expenses. Accordingly, the Panel finds that the claimants have not established that they suffered any particular loss in relation to the amounts asserted. Further, as these costs were normal operating expenses, they have been considered in the claimants' loss of profits awards.

225. Buildings and Roads Company also raises a claim under this category. The claim relates to items, such as laboratory equipment, lost as a direct result of Iraq's invasion and occupation of Kuwait. The amount claimed is not "material" and the cause and value of the losses are supported by the auditor's statements in the claimants audited accounts. The claim has therefore been allowed by the Panel without any adjustment being recommended.

VI. OTHER ISSUES

A. Applicable dates for currency exchange rate and interest

226. All claimants have asserted their losses in Kuwaiti dinars. However, as the Commission issues its awards in United States dollars, the Panel must determine the appropriate exchange rate to apply to losses or claims expressed in Kuwaiti dinars and other currencies.

227. The three options generally considered by courts and tribunals for this purpose are the exchange rate on the date (i) of the loss, (ii) of judgement, or (iii) of the execution of the judgement. Previous Panels have already decided this issue and selected the exchange rate on the date of the loss as the most appropriate method of calculating the exchange rate for claims. (See "Report and recommendations made by the Panel of Commissioners concerning the first instalment of individual claims for damages up to US$100,000 (category 'C' claims)" (S/AC.26/1994/3) ("First C Report"), pages 31-32; First F Report, para. 100; and First E2 Report, para. 279.) This Panel concurs with this view and recommends the application of the exchange rate on the date of loss.

228. This recommendation also accords with Governing Council decision 16 on awards of interest (S/AC.26/1992/16), to pay interest "from the date the loss occurred until the date of payment". Accordingly, the Panel's determination of the date of the loss is relevant to both issues of currency exchange rate and interest payment.

229. Most losses asserted occurred on various occasions and fairly regularly throughout Iraq's invasion and occupation of Kuwait. Accordingly, the Panel recommends that the midpoint of the period of Iraq's occupation (15 November 1990) be used as the date of loss.

230. However, for loss of earnings or profits (including contractual earnings), often the losses have been incurred for some months after the liberation of Kuwait. In these cases, the Panel recommends using the midpoint of the period for which loss of earnings or profits has been awarded as the date of the loss.

231. Decision 16 indicates that the methods of calculation and of payment of interest will be considered by the Governing Council at a future date.

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The Panel therefore makes no further recommendation with respect to the payment of interest at this time.

232. During Iraq's occupation of Kuwait there were significant disturbances in the exchange rate for the Kuwaiti dinar. The Panel therefore recommends using the Kuwaiti dinar exchange rate on 1 August 1990 for losses where the midpoint of Iraq's occupation is used as the date of loss. The exchange rate used for 1 August 1990 for the Kuwaiti dinar, i.e., US$1 = KD 0.289, is the average monthly rate for July 1990 as reported in the United Nations Monthly Bulletin of Statistics, vol. XLIV, No. 12 (December 1990). (See also First C Report, page 33; First D Report, para. 62; First E2 Report, para. 284; and First F Report, para. 102.)

233. However, in claims for loss of earnings or profits, where the award relates to periods extending beyond the liberation of Kuwait, the Panel recommends using the average of the monthly commercial rates for the period for which an award for loss of earnings or profits has been recommended. In such cases, the Panel recommends that the Kuwaiti dinar exchange rates prevailing on 1 August 1990 be regarded as the exchange rates for the months during Iraq's occupation of Kuwait.

B. Claim preparation costs

234. The Panel has been informed by the Executive Secretary of the Commission that the Governing Council intends to resolve the issue of claim preparation costs in the future. Accordingly, the Panel makes no recommendation with respect to compensation for claim preparation costs at this time.

C. Recommended awards

235. Based on the foregoing, the awards recommended by the Panel for claimants in the first instalment of "E4" claims are set out in annex I to this report. The underlying principles behind the Panel's recommendations on claims in this instalment are summarized in annex II to this report.

Geneva, 30 December 1998

(Signed) Robert R. Briner
Chairman

(Signed) Alan J. Cleary
Commissioner

(Signed) Lim Tian Huat
Commissioner

Annex I

Recommended awards for first instalment of "E4" claims

Reported by UNSEO and UNCC claim numbers and claimant name

UNSEO claim no.*	UNCC claim no.	Claimant's name	Amount claimed (KD)	Net amount claimed (KD)**	Amount recommended (KD)	Amount recommended (US$)
E-00013	4002419	Abdul-Jaleel Mahmoud Al-Baqer & Sons Co.	488,685	488,685	392,209	1,355,527
E-00034	4000785	Musaad Al-Saleh Travel Company Hamad Musaad Al-Saleh and Partners W.L.L.	1,632,906	1,412,900	17,087	59,001
E-00035	4000786	Musaad Al-Saleh & Sons Investment Group W.L.L.	10,020,740	9,062,314	443,248	1,528,871
E-00037	4000787	Faisal Naser Al-Qatami & Sons Trading Co.	1,280,754	1,280,754	965,809	3,341,900
E-00081	4000784	Mobile Telephone Systems Co.	30,313,162	30,291,162	15,334,232	52,956,840
E-00092	4000758	Al Bahar & Bardawil for Private Material Co. W.L.L	373,005	330,517	277,266	959,398
E-00093	4000759	Kuwait Automotive Imports Co.	3,193,528	2,869,852	2,043,223	7,069,976
E-00094	4000760	Faris Al Dabbous & Sons Trading Co. W.L.L	381,624	342,190	238,776	825,489
E-00107	4000637	Automated Multi Access Systems Co., K.S.C.	641,476	579,178	132,002	455,917
E-00114	4000762	Building & Roads Co. (BARCO).	410,248	410,248	190,640	658,851
E-00130	4000804	Ghohar and Muthafar Trading Co.	464,595	419,313	317,110	1,096,694

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UNSEQ claim no.*	UNCC claim no.	Claimant's name	Amount claimed (KD)	Net amount claimed (KD)**	Amount recommended (KD)	Amount recommended (US$)
E-00160	4000805	Al-Noor Curtains Workshop Co. W.L.L.	2,978,177	2,537,853	2,272,827	7,864,453
E-00163	4000757	Al Istiklal New Exhibition Co. Abdul Aziz Khalaf & Co.	369,686	327,881	192,128	664,803
E-00184	4000761	Khaleefa Al-Matar General Trading & Contracting Company	116,661	116,661	97,943	338,903
E-00190	4000768	Adel Behbehani General Trading Co. W.L.L	305,972	276,184	110,665	382,924
E-00197	4000806	Seven Seas Readymade Garments, Cosmetics & Gifts Co., W.L.L.	986,385	871,280	622,889	2,155,325
E-00200	4000807	Al-Amir & Yaseen Jewellery Company-Yaseen Abdulla Al-Amir & Sons-Limited Liability Co.	345,852	343,352	287,723	994,937
E-00221	4000767	The Trading & Industrial Equipment Company	277,847	242,691	143,725	497,318
E-00237	4000808	Al-Shami Trd. & Gen. Contracting Co. W.L.L Sabeeha Saud Saleh Al-Shami & Co.	308,373	306,873	78,797	272,654
E-00240	4000763	Al-Waleed Construction & Trading Co. W.L.L.	408,796	407,796	107,755	372,855
E-00262	4000764	Sayed Hassan Bahbahani & Sons Co. Pty. Ltd.	821,087	821,087	119,255	412,284
E-00264	4000765	Kamal and Amoori for Technical Appliances Limited Liability Company	73,796	72,976	30,183	104,439
E-00290	4000766	Al-Sawagh Trade Comp.	4,200	4,200	2,400	8,304

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UNSEQ claim no.*	UNCC claim no.	Claimant's name	Amount claimed (KD)	Net amount claimed (KD)**	Amount recommended (KD)	Amount recommended (US$)
E-00294	4000809	Bait Awladona Co.	349,914	329,726	183,903	635,055
E-00347	4002396	Carpets Industry Co. K.S.C. (Closed)	841,437	840,687	140,437	484,833
E-00502	4000810	Al Fulaij United Group Company for General Trading & Contracting/Mahmoud Yousif Abdul Aziz Al Fulaij & Partners (W.L.L.)	2,280,610	2,036,534	1,312,412	4,541,218
E-00562	4000811	Al-Sabah Trading & Contracting Co.-(W.L.L.)	797,226	795,476	501,079	1,733,837
E-00568	4002397	Sons of Fahad Al-Sultan and Partners Co. W.L.L.	3,061,304	2,890,799	2,054,842	7,096,717
E-00573	4002398	Integral Services Co. W.L.L.	156,611	155,111	79,743	275,927
E-00589	4002399	M/s. Safwan International Co. W.L.L.	214,478	213,478	156,848	542,727
E-00599	4002400	The Arabic Co. for Sanitaryware Cons. Substances, Trade and Electronic Appliances W.L.L.	346,312	344,812	344,812	1,193,121
E-00636	4002402	Union Trading Company Abdul-Razaq Al-Rozouki and Partner W.L.L.	4,980,171	4,972,171	3,027,699	10,476,467
E-00655	4002403	Petroleum Services Company	434,073	431,573	88,249	304,609
E-00669	4002404	Mohamad & Al Sahen Supermarket for Foodstuff Co.	1,803,075	1,801,075	933,429	3,227,791
E-00682	4002405	Kuwait India International Exchange Co.	325,934	324,534	271,349	937,710

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UNSEQ claim no.*	UNCC claim no.	Claimant's name	Amount claimed (KD)	Net amount claimed (KD)**	Amount recommended (KD)	Amount recommended (US$)
E-00685	4002406	Abdulla Al-Khorafi & Sons Co., W.L.L.	464,280	461,280	237,858	822,719
E-00713	4002407	Al Naji and Al-Saigh General Trading and Contracting	413,463	339,900	146,320	506,298
E-00731	4002408	Gulf Treasure Co. for Cont. & Gen. Transport Ibrahim Hussain Malek and Partner W.L.L.	1,828,257	1,826,757	781,257	2,703,311
E-00771	4002410	Al Maged & Alzeen Co. for General Contracting	89,813	83,470	46,609	160,721
E-00785	4002411	Al Omar Technical Company	210,425	208,925	118,603	410,264
E-00801	4002412	Globe Commercial Co.	1,139,637	1,137,137	396,853	1,373,194
E-00851	4002414	Gulf Cows Breeding Company W.L.L.	523,085	521,485	382,876	1,324,028
E-00929	4002416	Jawad & Haider Y. Abulhasan Co.	520,814	520,814	73,239	253,422

UNSEQ claim no.*	UNCC claim no.	Claimant's name	Amount claimed (KD)	Net amount claimed (KD)**	Amount recommended (KD)	Amount recommended (US$)
E-00941	4002417	Kuwait Agriculture Company W.L.L.	1,393,746	1,392,746	299,969	1,037,955
E-01014	4002418	Kuwaiti British Readymix Company	1,814,072	1,807,666	1,109,879	3,838,672
TOTAL			80,186,292	77,252,103	37,106,157	128,258,259

* The UNSEQ number is the provisional claim number assigned to each claim by PAAC.

** The "Net amount claimed" is the original amount claimed less amounts claimed for claim preparation costs and interest. As set forth in paragraphs 234 and 231 of the report, the Panel has made no recommendation with regard to these items.

Annex II

Recommended awards for first instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Abdul-Jaleel Mahmoud Al-Baqer & Sons Co.
UNCC claim number: 4002419
UNSEQ number: E-00013

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	35,000	29,563	Adjusted for depreciation and maintenance. See paragraphs 88-106 of the report.
Loss of tangible property	46,950	37,561	Claim reclassified to loss of tangible property and stock. Tangible property claim adjusted for unexplained failure to repair/replace. See paragraphs 111-116 and paragraph 136 of the report.
Loss of stock	217,107	191,230	Livestock claim adjusted for evidentiary shortcomings. Fodder claim was adjusted for evidentiary shortcomings and obsolescence. See paragraphs 117-126 and paragraphs 137-140 of the report.
Loss of profits	189,628	133,855	Adjusted to restrict the period of loss to 12 months. See paragraphs 160-206 of the report.
TOTAL	488,685	392,209	

Annex II

Recommended awards for first instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Musaad Al-Saleh Travel Company
Hamad Musaad Al-Saleh and Partners W.L.L.

UNCC Claim number: 4000785

UNSEQ number: E-00034

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of tangible property	12,294	6,762	Claim reclassified to loss of tangible property and cash. Tangible property claim adjusted for evidentiary shortcomings and for unexplained failure to repair/replace. See paragraphs 111-116 and paragraph 136 of the report.
Loss of cash	7,647	0	Insufficient evidence provided to substantiate claimed loss. See paragraphs 127-129 and paragraphs 141-142 of the report.
Loss of income-producing property	1,046,656	0	See paragraphs 146-151 of the report.
Loss of profits	346,303	10,325	Adjusted to restrict period of loss to 12 months and to reflect historical results. See paragraphs 160-206 of the report.
TOTAL	1,412,900	17,087	

Claim preparation costs	2,000	n.a.	Governing Council's determination pending. See paragraph 234 of the report.
Interest	218,006	n.a.	Governing Council's determination pending. See paragraph 231 of the report.

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Annex II

Recommended awards for first instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Musaad Al-Saleh & Sons Investment Group W.L.L.
UNCC claim number: 4000786
UNSEQ number: E-00035

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	23,699	14,812	Adjusted for depreciation and maintenance. See paragraphs 88-106 of the report.
Loss of tangible property	11,756	6,466	Claim reclassified to loss of tangible property and cash. Tangible property claim adjusted for evidentiary shortcomings and for unexplained failure to repair/replace. See paragraphs 111-116 and paragraph 136 of the report.
Loss of cash	17,669	0	Insufficient evidence provided to substantiate claimed loss. See paragraphs 127-129 and paragraphs 141-142 of the report.
Loss of income-producing property	5,721,805	0	See paragraphs 146-151 of the report.
Loss of profits	1,425,702	407,246	Adjusted to restrict period of loss to 12 months and to reflect historical results. See paragraphs 160-206 of the report.
Bad debts	1,861,683	14,724	Adjusted for evidentiary shortcomings. See paragraph 207-219 of the report.
TOTAL	9,062,314	443,248	

Claim preparation costs	19,293	n.a.	Governing Council's determination pending. See paragraph 234 of the report.
Interest	939,133	n.a.	Governing Council's determination pending. See paragraph 231 of the report.

Annex II

Recommended awards for first instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Faisal Naser Al-Qatami & Sons Trading Co.
UNCC claim number: 4000787
UNSEQ number: E-00037

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of stock	1,222,554	935,254	Adjusted for evidentiary shortcomings and obsolescence. See paragraphs 117-126 and paragraphs 137-140 of the report.
Loss of profits	58,200	30,555	Adjusted to restrict period of loss to 7 months, to reflect historical results and for evidentiary shortcomings. See paragraphs 160-206 of the report.
TOTAL	1,280,754	965,809	

Annex II

Recommended awards for first instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Mobile Telephone Systems Co.
UNCC claim number:	4000784
UNSEQ number:	E-00081

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of contracts	314,795	163,030	See paragraphs 64-87 of the report.
Loss of real property	754,497	386,304	Adjusted for depreciation, betterment and evidentiary shortcomings. Claim for repairs to head office allowed without adjustment. See paragraphs 88-106 of the report.
Loss of tangible property	12,885,514	5,283,464	Claim reclassified to loss of tangible property, stock and cash. Tangible property claim adjusted to reflect net book value. Claim for "stolen materials" allowed without adjustment. Insufficient evidence to substantiate temporary furniture loss. See paragraphs 111-116 and paragraph 136 of the report.
Loss of stock	1,380,858	864,348	Stock claim adjusted for obsolescence and absence of a roll-forward calculation. However, claim for Nokia equipment and rental equipment allowed in full as sufficiently corroborated. See paragraphs 117-126 and paragraphs 137-140 of the report.
Loss of cash	22,586	22,586	Claim awarded in full. See paragraphs 127-129 and paragraphs 141-142 of the report.
Loss of profits	14,542,259	8,614,500	Adjusted to restrict period of loss to 15 months and to reflect historical results. See paragraphs 160-206 of the report.
Bad debts	333,000	0	Insufficient evidence provided to substantiate claimed loss. See paragraphs 207-219 of the report.

Loss due to restart of business	57,653	0	Insufficient evidence provided to substantiate claimed loss. See paragraphs 220-223 of the report.
TOTAL	30,291,162	15,334,232	

Claim preparation costs	22,000	n.a.	Governing Council's determination pending. See paragraph 234 of the report.

Annex II

Recommended awards for first instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Al Bahar & Bardawil for Private Material Co. W.L.L
UNCC claim number:	4000758
UNSEQ number:	E-00092

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of tangible property	14,323	14,323	Claim reclassified to loss of tangible property, stock and vehicles. Tangible property claim awarded in full. See paragraphs 111-116 and paragraph 136 of the report.
Loss of stock	263,936	233,058	Claim adjusted for obsolescence. See paragraphs 117-126 and paragraph 137-140 of the report.
Loss of vehicles	14,623	11,362	Claim adjusted to the M.V.V. Table values. See paragraphs 130-135 and paragraphs 143-145 of the report.
Loss of profits	37,635	18,523	Adjusted to provision shown in post-liberation accounts. See paragraphs 160-206 of the report.
TOTAL	330,517	277,266	

Claim preparation costs	2,000	n.a.	Governing Council's determination pending. See paragraph 234 of the report.
Interest	40,488	n.a.	Governing Council's determination pending. See paragraph 231 of the report.

Annex II

Recommended awards for first instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Kuwait Automotive Imports Co.
UNCC claim number:	4000759
UNSEQ number:	E-00093

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of stock	1,516,580	1,005,093	Adjusted to write-off reported in the post-liberation accounts. See paragraphs 117-126 and paragraphs 137-140 of the report.
Loss of profits	1,353,272	1,038,130	Adjusted to reflect historical results. See paragraphs 160-206 of the report.
TOTAL	2,869,852	2,043,223	

Claim preparation costs	5,600	n.a.	Governing Council's determination pending. See paragraph 234 of the report.
Interest	318,076	n.a.	Governing Council's determination pending. See paragraph 231 of the report.

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Annex II

Recommended awards for first instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Faris Al Dabbous & Sons Trading Co. W.L.L
UNCC claim number:	4000760
UNSEQ number:	E-00094

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of stock	263,676	166,016	Claim was reclassified to loss of stock and vehicles. Stock claim was adjusted for stock build-up, stock remaining at liberation and obsolescence. See paragraphs 117-126 and paragraphs 137-140 of the report.
Loss of vehicles	14,159	11,983	Claim adjusted to M.V.V. Table values. See paragraphs 130-135 and paragraphs 143-145 of the report.
Loss of profits	64,355	60,777	Adjusted to restrict the period of loss to 12 months. See paragraphs 160-206 of the report.
TOTAL	342,190	238,776	
Claim preparation costs	5,500	n.a.	Governing Council's determination pending. See paragraph 234 of the report.
Interest	33,934	n.a.	Governing Council's determination pending. See paragraph 231 of the report.

Annex II

Recommended awards for first instalment of "E4" claims
Reported by claimant name and category of loss

Claimant's name: Automated Multi Access Systems Co., K.S.C.
UNCC claim number: 4000637
UNSEQ number: E-00107

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of tangible property	57,058	55,465	Claim reclassified to loss of tangible property and vehicles. Tangible property claim adjusted for unexplained failure to repair/replace office equipment. See paragraphs 111-116 and paragraph 136 of the report.
Loss of vehicles	5,436	5,436	Claim awarded in full. See paragraphs 130-135 and paragraphs 143-145 of the report.
Loss of profits	515,399	70,137	Adjusted to restrict the period of loss to 12 months and to reflect historical results. See paragraphs 160-206 of the report.
Bad debts	1,285	964	Adjusted for evidentiary shortcomings. See paragraphs 207-219 of the report.
TOTAL	579,178	132,002	

Claim preparation costs	2,000	n.a.	Governing Council's determination pending. See paragraph 234 of the report.
Interest	60,298	n.a.	Governing Council's determination pending. See paragraph 231 of the report.

Annex II

Recommended awards for first instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Building & Roads Co. (BARCO).
UNCC claim number:	4000762
UNSEQ number:	E-00114

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of tangible property	250,238	106,702	Claim reclassified to loss of tangible property, stock and vehicles. Tangible property claim adjusted to reflect net book value and for evidentiary shortcomings. See paragraphs 111-116 and paragraph 136 of the report.
Loss of stock	12,545	7,338	Claim adjusted for evidentiary shortcomings and obsolescence. See paragraphs 117-126 and paragraphs 137-140 of the report.
Loss of vehicles	7,590	7,590	Claim awarded in full. See paragraphs 130-135 and paragraphs 143-145 of the report.
Payment or relief to others	15,583	0	See paragraphs 152-159 of the report.
Loss of profits	122,078	67,284	Adjusted to restrict the period of loss to 12 months. See paragraphs 160-206 of the report.
Bad debts	488	0	Insufficient evidence provided to substantiate claim. See paragraphs 207-219 of the report.
Other loss not categorized	1,726	1,726	Claim awarded in full. See paragraphs 224-225 of the report.
TOTAL	410,248	190,640	

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Annex II

Recommended awards for first instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Ghohar and Muthafar Trading Co.
UNCC claim number:	4000804
UNSEQ number:	E-00130

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of stock	296,862	267,176	Original tangible property claim reclassified to loss of stock and vehicles. Stock claim adjusted for obsolescence. See paragraphs 117-126 and paragraph 137-140 of the report.
Loss of vehicles	3,500	1,926	Claim adjusted to M.V.V. Table values. See paragraphs 130-135 and paragraphs 143-145 of the report.
Loss of profits	118,951	48,008	Adjusted to reflect historical results. See paragraphs 160-206 of the report.
TOTAL	419,313	317,110	

Claim preparation costs	3,700	n.a.	Governing Council's determination pending. See paragraph 234 of the report.
Interest	41,582	n.a.	Governing Council's determination pending. See paragraph 231 of the report.

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Annex II

Recommended awards for first instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al-Noor Curtains Workshop Co. W.L.L.
UNCC claim number: 4000805
UNSEQ number: E-00160

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	98,900	79,120	Adjusted for maintenance. See paragraphs 88-106 of the report.
Loss of stock	2,434,453	2,191,007	Original tangible property claim reclassified to loss of stock and vehicles. Stock claim adjusted for obsolescence. See paragraphs 117-126 and paragraph 137-140 of the report.
Loss of vehicles	4,500	2,700	"Non-M.V.V. Table" vehicles claim adjusted as stated in paragraphs 130-135 and paragraphs 143-145 of the report.
TOTAL	2,537,853	2,272,827	

Claim preparation costs	5,000	n.a.	Governing Council's determination pending. See paragraph 234 of the report.
Interest	435,324	n.a.	Governing Council's determination pending. See paragraph 231 of the report.

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Annex II

Recommended awards for first instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Al Istiklal New Exhibition Co. Abdul Aziz Khalaf & Co.
UNCC claim number:	4000757
UNSEQ number:	E-00163

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of tangible property	2,182	1,746	Claim reclassified to loss of tangible property, stock and cash. Tangible property claim adjusted for unexplained failure to repair/replace. See paragraphs 111-116 and paragraph 136 of the report.
Loss of stock	289,087	176,343	Claim adjusted for evidentiary shortcomings and obsolescence. See paragraphs 117-126 and paragraph 137-140 of the report.
Loss of cash	6,000	0	Insufficient evidence provided to substantiate claimed loss. See paragraphs 127-129 and paragraphs 141-142 of the report.
Loss of profits	30,612	14,039	Adjusted to restrict the period of loss to 7 months and to reflect historical results. See paragraphs 160-206 of the report.
TOTAL	327,881	192,128	

Interest	41,805	n.a.	Governing Council's determination pending. See paragraph 231 of the report.

Annex II

Recommended awards for first instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Khaleefa Al-Matar General Trading & Contracting Company
UNCC claim number:	4000761
UNSEQ Number:	E-00184

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of tangible property	2,323	2,323	Claim reclassified to loss of tangible property , stock, cash and vehicles. Tangible property claim awarded in full. See paragraphs 111-116 and paragraph 136 of the report.
Loss of stock	64,458	49,310	Claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 117-126 and paragraph 137-140 of the report.
Loss of cash	4,783	4,783	Claim awarded in full. See paragraphs 127-129 and paragraph 141-142 of the report.
Loss of vehicles	7,573	4,003	"Non-M.V.V. Table" vehicles claim adjusted as stated in paragraphs 130-135 and paragraphs 143-145 of the report.
Loss of profits	37,524	37,524	Claim awarded in full. See paragraphs 160-206 of the report.
TOTAL	116,661	97,943	

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Annex II

Recommended awards for first instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Adel Behbehani General Trading Co. W.L.L
UNCC claim number: 4000768
UNSEQ number: E-00190

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of stock	264,278	110,665	Original tangible property claim reclassified to loss of stock. Stock claim adjusted for stock build-up. See paragraphs 117-126 and paragraphs 137-140 of the report.
Loss of profits	11,906	0	Adjusted to reflect historical results. See paragraphs 160-206 of the report.
TOTAL	276,184	110,665	

Claim preparation costs	2,400	n.a.	Governing Council's determination pending. See paragraph 234 of the report.
Interest	27,388	n.a.	Governing Council's determination pending. See paragraph 231 of the report.

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Annex II

Recommended awards for first instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Seven Seas Readymade Garments, Cosmetics & Gifts Co., W.L.L.
UNCC claim number:	4000806
UNSEQ number:	E-00197

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of tangible property	15,526	12,421	Claim reclassified to loss of tangible property, stock and vehicles. Tangible property claim for furniture and for decorations adjusted for unexplained failure to replace/repair. See paragraphs 111-116 and paragraph 136 of the report.
Loss of stock	797,408	552,122	Stock claim adjusted for stock build-up and obsolescence. Goods in transit claim adjusted for evidentiary shortcomings. See paragraphs 117-126 and paragraphs 137-140 of the report.
Loss of vehicles	2,642	2,642	Claim awarded in full. See paragraphs 130-135 and paragraphs 143-145 of the report.
Loss of profits	55,704	55,704	Claim awarded in full. See paragraphs 160-206 of the report.
TOTAL	871,280	622,889	

Claim preparation costs	750	n.a.	Governing Council's determination pending. See paragraph 234 of the report.
Interest	114,355	n.a.	Governing Council's determination pending. See paragraph 231 of the report.

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Annex II

Recommended awards for first instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al Amir & Yaseen Jewellery Company-Yaseen Abdulla Al-Amir & Sons-Limited Liability Co.
UNCC claim number: 4000807
UNSEQ number: E-00200

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of stock	274,953	233,710	Original tangible property claim reclassified to loss of stock. Stock claim adjusted for evidentiary shortcomings. See paragraphs 117-126 and paragraphs 137-140 of the report.
Loss of profits	68,399	54,013	Adjusted to restrict the period of loss to 12 months and to reflect historical results. See paragraphs 160-206 of the report.
TOTAL	343,352	287,723	

Claim preparation costs	2,500	n.a.	Governing Council's determination pending. See paragraph 234 of the report.

Annex II

Recommended awards for first instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	The Trading & Industrial Equipment Company
UNCC claim number:	4000767
UNSEQ number:	E-00221

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of stock	121,488	66,386	Original tangible property claim reclassified to loss of stock and vehicles. Stock claim adjusted to reflect write-off reported in post-liberation accounts, for obsolescence and evidentiary shortcomings. Goods in transit claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 117-126 and paragraphs 137-140 of the report.
Loss of vehicles	15,587	6,854	Claim adjusted as per paragraphs 130-135 and paragraphs 143-145 of the report.
Loss of profits	105,616	70,485	Adjusted to loss shown in post-liberation accounts. See paragraphs 160-206 of the report.
TOTAL	242,691	143,725	

Claim preparation costs	2,007	n.a.	Governing Council's determination pending. See paragraph 234 of the report.
Interest	33,149	n.a.	Governing Council's determination pending. See paragraph 231 of the report.

Annex II

Recommended awards for first instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al-Shami Trd. & Gen. Contracting Co. W.L.L
Sabeeha Saud Saleh Al-Shami & Co.
UNCC claim number: 4000808
UNSEQ number: E-00237

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of tangible property	11,899	8,000	Claim reclassified to loss of tangible property and stock. Tangible property claim adjusted due to unexplained failure to replace/repair. See paragraphs 111-116 and paragraph 136 of the report.
Loss of stock	294,974	70,797	Claim adjusted for stock build-up and obsolescence. See paragraphs 117-126 and paragraphs 137-140 of the report.
TOTAL	306,873	78,797	

Claim preparation costs	1,500	n.a.	Governing Council's determination pending. See paragraph 234 of the report.

Annex II

Recommended awards for first instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Al-Waleed Construction & Trading Co. W.L.L
UNCC claim number:	4000763
UNSEQ number:	E-00240

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of tangible property	1,609	1,609	Claim reclassified to loss of tangible property, stock and vehicles. Tangible property claim awarded in full. See paragraphs 111-116 and paragraph 136 of the report.
Loss of stock	146,806	63,845	Claim adjusted for obsolescence and evidentiary shortcomings. Insufficient evidence to substantiate claim for goods in transit. See paragraphs 117-126 and paragraphs 137-140 of the report.
Loss of vehicles	5,206	0	Insufficient evidence, i.e. no Kuwaiti deregistration certificates, provided to substantiate claimed loss. See paragraphs 130-135 and paragraphs 143-145 of the report.
Loss of profits	112,347	42,301	Adjusted to restrict the period of loss to 7 months and to reflect historical results. See paragraphs 160-206 of the report.
Bad debts	141,828	0	Insufficient evidence provided to substantiate claimed loss. See paragraphs 207-219 of the report.
TOTAL	407,796	107,755	

Claim preparation costs	1,000	n.a.	Governing Council's determination pending. See paragraph 234 of the report.

Annex II

Recommended awards for first instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Sayed Hassan Bahbahani & Sons Co. Pty. Ltd.
UNCC claim number: 4000764
UNSEQ number: E-00262

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	288,257	88,867	Adjusted for maintenance and betterment. See paragraphs 88-106 of the report.
Loss of profits	532,830	30,388	Adjusted to restrict the period of loss to 12 months and to reflect historical results. See paragraphs 160-206 of the report.
TOTAL	821,087	119,255	

Annex II

Recommended awards for first instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Kamal & Amoori for Technical Appliances Limited Liability Company
UNCC claim number:	4000765
UNSEQ number:	E-00264

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of tangible property	5,454	3,349	Claim reclassified to loss of tangible property, stock and cash. Tangible property claim adjusted for unexplained failure to repair/replace and for additional depreciation, where appropriate. See paragraphs 111-116 and paragraph 136 of the report.
Loss of stock	49,648	18,085	Claim adjusted for evidentiary shortcomings, overstocking and obsolescence. See paragraphs 117-126 and paragraphs 137-140 of the report.
Loss of cash	375	0	Insufficient evidence provided to substantiate claim. See paragraphs 127-129 and paragraph 141-142 of the report.
Loss of profits	17,499	8,749	Adjusted to loss reported in post-liberation accounts. See paragraphs 160-206 of the report.
TOTAL	72,976	30,183	

Claim preparation costs	820	n.a.	Governing Council's determination pending. See paragraph 234 of the report.

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Annex II

Recommended awards for first instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al-Sawagh Trade Comp.
UNCC claim number: 4000766
UNSEQ number: E-00290

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of vehicles	4,200	2,400	Original tangible property claim reclassified to loss of vehicles. Vehicle claim adjusted to M.V.V. Table values. See paragraphs 130-135 and paragraphs 143-145 of the report.
TOTAL	4,200	2,400	

Annex II

Recommended awards for first instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Bait Awladona Co.
UNCC claim number:	4000809
UNSEQ number:	E-00294

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of tangible property	7,670	7,670	Claim reclassified to loss of tangible property, stock and cash. Tangible property claim awarded in full. See paragraphs 111-116 and paragraph 136 of the report.
Loss of stock	112,353	60,034	Stock claim adjusted for stock build-up and obsolescence. Goods in transit claim adjusted for evidentiary shortcomings and obsolescence. See paragraphs 117-126 and paragraphs 137-140 of the report.
Loss of cash	8,040	8,040	Claim awarded in full. See paragraphs 127-129 and paragraphs 141-142 of the report.
Loss of profits	199,819	107,900	Adjusted to restrict the period of loss to 12 months and to reflect historical results. See paragraphs 160-206 of the report.
Loss due to restart of business	1,609	259	Adjusted for maintenance. See paragraphs 220-223 of the report.
Other loss not categorized	235	0	Insufficient evidence provided to substantiate claimed loss. See paragraphs 224-225 of the report.
TOTAL	329,726	183,903	

Interest	20,188	n.a.	Governing Council's determination pending. See paragraph 231 of the report.

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Annex II

Recommended awards for first instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Carpets Industry Co. K.S.C. (Closed)
UNCC claim number:	4002396
UNSEQ number:	E-00347

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	32,000	25,600	Adjusted for unexplained failure to repair/replace. See paragraphs 88-106 of the report.
Loss of tangible property	8,511	3,522	Claim reclassified to loss of tangible property, stock and vehicles. Tangible property claim adjusted for depreciation. See paragraphs 111-116 and paragraph 136 of the report.
Loss of stock	657,383	15,185	Claim adjusted to write-off in post-liberation accounts and for obsolescence. See paragraphs 117-126 and paragraphs 137-140 of the report.
Loss of vehicles	3,220	3,220	Claim awarded in full. See paragraphs 130-135 and paragraphs 143-145 of the report.
Loss of profits	137,943	92,910	Adjusted to restrict the period of loss to 12 months and to reflect historical results. See paragraphs 160-206 of the report.
Other loss not categorized	1,630	0	Insufficient evidence provided to substantiate claim. See paragraphs 224-225 of the report.
TOTAL	840,687	140,437	

Claim preparation costs	750	n.a.	Governing Council's determination pending. See paragraph 234 of the report.

Annex II

Recommended awards for first instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Al-Fulaij United Group for General Trading & Contracting/Mahmoud Yousif Abdul Aziz Al Fulaij & Partners (W.L.L.)
UNCC claim number:	4000810
UNSEQ number:	E-00502

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of tangible property	496,074	282,300	Claim reclassified to loss of tangible property, stock and vehicles. Tangible property claim adjusted for depreciation and for unexplained failure to repair/replace. See paragraphs 111-116 and paragraph 136 of the report.
Loss of stock	901,914	527,620	Claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 117-126 and paragraphs 137-140 of the report.
Loss of vehicles	261,100	154,068	Claim adjusted as per paragraphs 130-135 and paragraphs 143-145 of the report.
Loss of profits	377,446	348,424	Adjusted to reflect historical results. See paragraphs 160-206 of the report.
TOTAL	2,036,534	1,312,412	

Claim preparation costs	2,000	n.a.	Governing Council's decision pending. See paragraph 234 of the report.
Interest	242,076	n.a.	Governing Council's decision pending. See paragraph 231 of the report.

Annex II

Recommended awards for first instalment of "E4" claims

Reported by claimant name and category of loss

Clai 's name: Al-Sabah Trading & Contracting Co. - (W.L.L.)
UNCC im number: 4000811
UNSE mber: E-00562

gory of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Los tangible pro y	77,521	19,641	Claim reclassified to loss of tangible property, stock and vehicles. Tangible property claim adjusted for evidentiary shortcomings and depreciation. See paragraphs 111-116 and paragraph 136 of the report.
Los stock	680,085	464,148	Claim adjusted for evidentiary shortcomings, obsolescence and stock build-up. See paragraphs 117-126 and paragraphs 137-140 of the report.
Los vehicles	9,950	9,740	Claim adjusted to M.V.V. Table values. See paragraphs 130-135 and paragraphs 143-145 of the report.
Los profits	27,920	7,550	Adjusted to reflect historical results. See paragraphs 160-206 of the report.
TOT	795,476	501,079	

Cla reparation cos	1,750	n.a.	Governing Council's determination pending. See paragraph 234 of the report.

Annex II

Recommended awards for first instalment of "E4" claims

Reported by claimant name and category of loss

Clai ’s name: Sons of Fahad Al-Sultan & Partners Co. W.L.L.
UNCC aim number: 4002397
UNSE umber: E-00568

gory of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Los real property	1,332,935	901,843	Adjusted for maintenance, evidentiary shortcomings and betterment. See paragraphs 88-106 of the report.
Los tangible pro y	38,544	18,893	Claim reclassified to loss of tangible property, cash and vehicles. Tangible property claim adjusted for depreciation and for unexplained failure to repair/replace in the case of survey equipment. Furniture claim adjusted to reflect net book value. Claim for boats awarded in full. See paragraphs 111-116 and paragraph 136 of the report.
Los cash	8,981	0	Insufficient evidence provided to substantiate claimed loss. See paragraphs 127-129 and paragraphs 141-142 of the report.
Los vehicles	5,850	5,738	Claim adjusted to M.V.V. Table values. See paragraphs 130-135 and paragraphs 143-145 of the report.
Los profits	1,504,489	1,128,368	Adjusted to restrict the period of loss to 12 months, to reflect historical results and for evidentiary shortcomings. See paragraphs 160-206 of the report.
TOT	2,890,799	2,054,842	

Int t	170,505	n.a.	Governing Council’s determination pending. See paragraph 231 of the report.

Annex II

Recommended awards for first instalment of "E4" claims

Reported by claimant name and category of loss

mant's name: Integral Services Co. W.L.L.
C claim number: 4002398
EO number: E-00573

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
ss of tangible roperty	37,967	23,549	Original income-producing property claim reclassified to loss of tangible property, stock and vehicles. Tangible property claim adjusted for depreciation. Claim for "portable office" awarded in full. See paragraphs 111-116 and paragraph 136 of the report.
ss of stock	38,241	34,540	Claim adjusted for obsolescence. See paragraphs 117-126 and paragraphs 137-140 of the report.
ss of vehicles	9,393	4,197	Claim adjusted to M.V.V. Table values for 5 vehicles for which Kuwaiti deregistration certificates were submitted. See paragraphs 130-135 and paragraphs 143-145 of the report.
ss of profits	69,510	17,457	Original contracts claim reclassified to loss of profits. Claim adjusted to reflect historical results, windfall profits and to restrict the period of loss to 9 months. See paragraphs 160-206 of the report.
OTAL	155,111	79,743	

laim preparation osts	1,500	n.a.	Governing Council's determination pending. See paragraph 234 of the report.

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Annex II

Recommended awards for first instalment of "E4" claims

Reported by claimant name and category of loss

ant's name: M/s. Safwan International Co. W.L.L.
claim number: 4002399
number: E-00589

ategory of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
of stock	84,828	70,076	Original tangible property claim reclassified to loss of stock. Stock claim adjusted to reflect historical profit margins and obsolescence. Goods in transit claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 117-126 and paragraphs 137-140 of the report.
of profits	69,598	27,720	Adjusted to loss recorded in claimant's audited post-liberation accounts. See paragraphs 160-206 of the report.
debts	59,052	59,052	Claim awarded in full. See paragraphs 207-219 of the report.
AL	213,478	156,848	

m preparation ts	1,000	n.a.	Governing Council's determination pending. See paragraph 234 of the report.

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Annex II

Recommended awards for first instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: The Arabic Co. for Sanitaryware Cons. Substances, Trade and Electronic Appliances W.L.L.
UNCC claim number: 4002400
UNSEQ number: E-00599

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of stock	344,812	344,812	Original tangible property claim reclassified to loss of stock. Stock claim awarded in full. See paragraphs 117-126 and paragraphs 137-140 of the report.
TOTAL	344,812	344,812	

Claim preparation costs	1,500	n.a.	Governing Council's determination pending. See paragraph 234 of the report.

Annex II

Recommended awards for first instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Union Trading Company Abdul-Razaq Al-Rozouki and Partner W.L.L.
UNCC claim number:	4002402
UNSEQ number:	E-00636

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	98,816	54,349	Adjusted for evidentiary shortcomings. See paragraphs 88-106 of the report.
Loss of tangible property	18,701	6,409	Claim reclassified to loss of tangible property, stock and vehicles. Tangible property claim adjusted for depreciation, evidentiary shortcomings and for unexplained failure to repair/replace. See paragraphs 111-116 and paragraph 136 of the report.
Loss of stock	3,528,297	2,328,927	Claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 117-126 and paragraphs 137-140 of the report.
Loss of vehicles	77,519	76,037	Claim adjusted to M.V.V. Table values. See paragraphs 130-135 and paragraphs 143-145 of the report.
Loss of profits	538,220	242,199	Adjusted for seasonality and evidentiary shortcomings. See paragraphs 160-206 of the report.
Bad debts	710,618	319,778	Adjusted for evidentiary shortcomings. See paragraphs 207-219 of the report.
TOTAL	4,972,171	3,027,699	

Claim preparation costs	8,000	n.a.	Governing Council's determination pending. See paragraph 234 of the report.

Annex II

Recommended awards for first instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Petroleum Services Company
UNCC claim number: 4002403
UNSFO number: E-00655

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of vehicles	36,919	25,303	Original tangible property claim reclassified to loss of vehicles. Vehicles claim adjusted to M.V.V. Table values. See paragraphs 130-135 and paragraphs 143-145 of the report.
Loss of profits	394,654	62,946	Adjusted to restrict the period of loss to 12 months and for evidentiary shortcomings. See paragraphs 160-206 of the report.
TOTAL	431,573	88,249	

Claim preparation costs	2,500	n.a.	Governing Council's determination pending. See paragraph 234 of the report.

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Annex II

Recommended awards for first instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Mohamad & Al Sahen Supermarket for Foodstuff Co.
UNCC claim number: 4002404
UNSEQ number: E-00669

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of tangible property	65,344	48,610	Claim reclassified to loss of tangible property and stock. Tangible property claim adjusted for depreciation and for unexplained failure to repair/replace. See paragraphs 111-116 and paragraph 136 of the report.
Loss of stock	1,323,457	711,605	Claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 117-126 and paragraphs 137-140 of the report.
Loss of profits	279,225	173,214	Adjusted to reflect historical results. See paragraphs 160-206 of the report.
Bad debts	133,049	0	Insufficient evidence provided to substantiate claimed loss. See paragraphs 207-219 of the report.
TOTAL	1,801,075	933,429	

Claim preparation costs	2,000	n.a.	Governing Council's determination pending. See paragraph 234 of the report.

Annex II

Recommended awards for first instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Kuwait India International Exchange Co.
UNCC claim number: 4002405
UNSEQ number: E-00682

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of tangible property	15,369	12,472	Claim reclassified to loss of tangible property and cash. Tangible property claim adjusted for depreciation. See paragraphs 111-116 and paragraph 136 of the report.
Loss of cash	157,117	157,117	Claim awarded in full. See paragraphs 127-129 and paragraphs 141-142 of the report.
Loss of profits	152,048	101,760	Adjusted to restrict the period of loss to 12 months and to reflect historical results. See paragraphs 160-206 of the report.
TOTAL	324,534	271,349	

Claim preparation costs	1,400	n.a.	Governing Council's determination pending. See paragraph 234 of the report.

Annex II

Recommended awards for first instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Abdulla Al-Khorafi & Sons Co., W.L.L.
UNCC claim number:	4002406
UNSEQ number:	E-00685

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of stock	411,852	211,126	Original tangible property claim reclassified to loss of stock. Stock claim adjusted for evidentiary shortcomings and obsolescence. See paragraphs 117-126 and paragraphs 137-140 of the report.
Loss of profits	49,428	26,732	Adjusted to reflect historical results and for evidentiary shortcomings. See paragraphs 160-206 of the report.
TOTAL	461,280	237,858	

Claim preparation costs	3,000	n.a.	Governing Council's determination pending. See paragraph 234 of the report.

Annex II

Recommended awards for first instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al Naji & Al-Saigh General Trading & Contracting
UNCC claim number: 4002407
UNSEQ number: E-00713

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of vehicles	339,900	146,320	Original tangible property claim reclassified to loss of vehicles. Vehicles claims adjusted as per paragraphs 130-135 and paragraphs 143-145 of the report.
TOTAL	339,900	146,320	

Claim preparation costs	1,000	n.a.	Governing Council's determination pending. See paragraph 234 of the report.
Interest	72,563	n.a.	Governing Council's determination pending. See paragraph 231 of the report.

Annex II

Recommended awards for first instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Gulf Treasure Co. for Cont. and Gen. Transport
Ibrahim Hussain Malek and Partner W.L.L.

UNCC claim number: 4002408

UNSEQ number: E-00731

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of tangible property	1,450,540	561,948	Claim reclassified to loss of tangible property, stock and vehicles. Tangible property claim adjusted for depreciation/maintenance and unexplained failure to repair/replace. See paragraphs 111-116 and paragraph 136 of the report.
Loss of stock	96,837	55,009	Claim adjusted for stock build-up and for obsolescence. See paragraphs 117-126 and paragraphs 137-140 of the report.
Loss of vehicles	28,940	28,940	Claim awarded in full. See paragraphs 130-135 and paragraphs 143-145 of the report.
Loss of profits	250,440	135,360	Adjusted to reflect historical results. See paragraphs 160-206 of the report.
TOTAL	1,826,757	781,257	

Claim preparation costs	1,500	n.a.	Governing Council determination pending. See paragraph 234 of the report.

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Annex II

Recommended awards for first instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al Maged & Alzeen Co. for General Contracting
UNCC claim number: 4002410
UNSEO number: E-00771

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of profits	83,470	46,609	Adjusted to restrict the period of loss to 12 months and to reflect historical results. See paragraphs 160-206 of the report.
TOTAL	83,470	46,609	

Claim preparation costs	500	n.a.	Governing Council's determination pending. See paragraph 234 of the report.
Interest	5,843	n.a.	Governing Council's determination pending. See paragraph 231 of the report.

Annex II

Recommended awards for first instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Al Omar Technical Company
UNCC claim number:	4002411
UNSEQ number:	E-00785

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of stock	194,942	107,932	Original tangible property claim reclassified to loss of stock. Stock claim adjusted for overstocking, obsolescence and evidentiary shortcomings. See paragraphs 117-126 and paragraphs 137-140 of the report.
Payment or relief to others	1,581	0	Insufficient evidence provided to substantiate claim. See paragraphs 152-159 of the report.
Loss of profits	12,402	10,671	Adjusted to restrict period of loss to 12 months and to reflect historical results. See paragraphs 160-206 of the report.
TOTAL	208,925	118,603	

Claim preparation costs	1,500	n.a.	Governing Council's determination pending. See paragraph 234 of the report.

Annex II

Recommended awards for first instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Globe Commercial Co.
UNCC claim number: 4002412
UNSEQ number: E-00801

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of contracts	30,408	7,121	Claim reclassified to loss of contracts and bad debts. Contracts claim adjusted for evidentiary shortcomings. See paragraphs 64-87 of the report.
Loss of real property	4,558	3,646	Adjusted for maintenance. See paragraphs 88-106 of the report.
Loss of tangible property	5,093	4,074	Claim reclassified to loss of tangible property, stock and vehicles. Tangible property claim adjusted for unexplained failure to repair/replace. See paragraphs 111-116 and paragraph 136 of the report.
Loss of stock	377,124	377,124	Claim awarded in full. See paragraphs 117-126 and paragraphs 137-140 of the report.
Loss of vehicles	6,700	4,888	Vehicle claim adjusted as per paragraphs 130-135 and 143-145 of the report.
Bad debts	713,254	0	Insufficient evidence provided to substantiate claimed loss. See paragraphs 207-219 of the report.
TOTAL	1,137,137	396,853	

Claim preparation costs	2,500	n.a.	Governing Council's determination pending. See paragraph 234 of the report.

Annex II

Recommended awards for first instalment of "E4" claims
Reported by claimant name and category of loss

Claimant's name: Gulf Cows Breeding Company W.L.L.
UNCC claim number: 4002414
UNSEQ number: E-00851

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	53,360	36,145	Adjusted for maintenance and betterment. See paragraphs 88-106 of the report.
Loss of tangible property	31,095	18,699	Claim reclassified to loss of tangible property and stock. Tangible property claim adjusted for depreciation and for unexplained failure to repair/replace. See paragraphs 111-116 and paragraph 136 of the report.
Loss of stock	328,850	260,780	Claim adjusted for evidentiary shortcomings. See paragraphs 117-126 and paragraphs 137-140 of the report.
Loss of profits	108,180	67,252	Claim adjusted to restrict the period of loss to 12 months and to reflect historical results. See paragraphs 160-206 of the report.
TOTAL	521,485	382,876	

Claim preparation costs	1,600	n.a.	Governing Council's determination pending. See paragraph 234 of the report.

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Annex II

Recommended awards for first instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Jawad & Haider Y. Abdulhasan Co.
UNCC claim number:	4002416
UNSEQ number:	E-00929

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	269,085	64,469	Adjusted for reasons stated in the report, paragraphs 88-106.
Loss of tangible property	129,459	8,770	Adjusted for reasons stated in the report, paragraphs 111-116 and paragraph 136 of the report.
Loss of income-producing property	122,270	0	Insufficient evidence provided to substantiate claimed loss and for reasons stated in the report, paragraphs 146-151.
TOTAL	520,814	73,239	

Annex II

Recommended awards for first instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Kuwait Agriculture Company W.L.L.
UNCC claim number: 4002417
UNSEO number: E-00941

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	91,865	14,351	Adjusted to reflect net book value, for evidentiary shortcomings and for unexplained failure to repair/replace. See paragraphs 88-106 of the report.
Loss of tangible property	13,150	3,443	Claim reclassified to loss of real property, tangible property, stock and vehicles. Tangible property claim adjusted for same reasons as set forth above for real property. Also see paragraphs 111-116 and paragraph 136 of the report.
Loss of stock	1,133,074	185,659	Claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 117-126 and paragraphs 137-140 of the report.
Loss of vehicles	14,426	14,426	Claim awarded in full. See paragraphs 130-135 and paragraphs 143-145 of the report.
Loss of profits	140,231	82,090	Adjusted to reflect historical results. See paragraphs 160-206 of the report.
TOTAL	1,392,746	299,969	

Claim preparation costs	1,000	n.a.	Governing Council's determination pending. See paragraph 234 of the report.

Annex II

Recommended awards for first instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Kuwaiti British Readymix Company
UNCC claim number:	4002418
UNSEQ number:	E-01014

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of tangible property	1,053,412	535,495	Claim reclassified to loss of tangible property, stock and vehicles. Tangible property claim adjusted for maintenance, evidentiary shortcomings and insufficient justification for failure to repair/replace. See paragraphs 111-116 and paragraph 136 of the report.
Loss of stock	158,513	89,664	Claim adjusted for obsolescence, stock build-up and evidentiary shortcomings. See paragraphs 117-126 and paragraphs 137-140 of the report.
Loss of vehicles	444,392	338,937	Vehicle claim adjusted as per paragraphs 130-135 and paragraphs 143-145 of the report.
Loss of profits	151,349	145,783	Adjusted to reflect historical results. See paragraphs 160-206 of the report.
TOTAL	1,807,666	1,109,879	

Claim preparation costs	6,406	n.a.	Governing Council's determination pending. See paragraph 234 of the report.

Annex VII

Report and recommendations made by the Panel of Commissioners concerning the third instalment of F1 claims*

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Introduction

1. This is the fourth report submitted to the Governing Council of the United Nations Compensation Commission (the "Commission") pursuant to article 38(e) of the Provisional Rules for Claims Procedure (the "Rules")1/ by the Panel of Commissioners appointed by the Governing Council at its twenty-first session on 22-23 July 1996 to review certain category "F" claims from Governments ("F1" claims)(the "Panel"). This report deals with the third instalment of "F1" claims.

2. The third instalment of claims was presented to the Panel in accordance with article 32 of the Rules on 22 July 1998. The instalment consists of the following twenty-four claims (the "Claims") filed by fourteen Governments (the "Claimants") for a total of approximately 39.5 million United States dollars ("US$"). The amount of compensation sought is indicated in parentheses after every claim.2/

(a) Australia: Trade Commission (US$173,482) and Overseas Property Group (US$108,856);

(b) The Republic of Austria: Federal Ministry of Foreign Affairs (US$3,010) and Office of the Federal President (US$139,618);

(c) The People's Republic of Bangladesh: Ministry of Labour and Manpower (US$12,012,488);

(d) The Republic of Finland: Ministry of Foreign Affairs (US$660,069);

(e) The Federal Republic of Germany: Federal Ministry for Research and Technology (US$1,928,910); Hessian Ministry for Women, Labour and Social Affairs (US$7,961); Government of Bavaria (US$15,536) and Federal Office of Administration (US$178,462);

(f) Ireland: Department of Defence (US$464,755);

(g) The Italian Republic: Institute for Foreign Trade (US$35,401);

(h) The Lebanese Republic: Ministry of Foreign Affairs (US$207,495);

(i) The Russian Federation: Ministry of Foreign Affairs (US$6,878,200);

(j) The Kingdom of Spain: Ministry of Foreign Affairs (US$702,258);

(k) The Syrian Arab Republic: Central Bureau of Statistics (US$2,143,997) and Foreign Ministry (Embassy of Syrian Arab Republic in Kuwait) (US$345,207);

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(l) The Kingdom of Thailand: (US$6,248,909);

(m) The Kingdom of Great Britain and Northern Ireland: Commonwealth War Graves Commission (US$68,323); Department of Social Security (US$107,487) and Ministry of Defence (US$4,307,899); and

(n) The United States of America: Department of Defense (US$413,214 plus interest); Department of Health and Human Services (US$1,759,049 plus interest) and United States Information Agency (US$624,206 plus interest).

I. PROCEEDINGS

3. In accordance with article 16 of the Rules, the Executive Secretary of the Commission reported the Claims to the Governing Council in his reports of 31 January 1997, 30 April 1997, 31 January 1998, 30 April 1998 and 31 July 1998. These reports were circulated to all Governments and international organizations that had filed claims before the Commission and to the Government of the Republic of Iraq ("Iraq"). A number of Governments, including Iraq, submitted additional information and views on the reports.

4. On 24 July 1998, the Panel issued procedural orders informing the Claimants that their claims were under review and classifying the Claims. The Panel determined that, in accordance with article 38(c) of the Rules, it would review the Claims within 180 days.

5. In the course of the preliminary review of the Claims, it was noted that several Claimants sought compensation for costs incurred in evacuating individuals, for payments made to reimburse Government employees for the loss of personal property, and for support payments made to individuals who had lost their source of income as a result of Iraq's invasion and occupation of Kuwait. As the individuals concerned might themselves have filed individual claims with the Commission in categories "C" and "D" for the same losses, the Panel was concerned that the Claims might be seeking compensation for losses that were the subject of category "C" or "D" claims.3/

6. To avoid multiple recovery of compensation across categories, the procedural orders issued on 24 July 1998 requested those Claimants seeking compensation for the evacuation of individuals, for reimbursements for individuals' losses of personal property or for support payments, to provide identification information which would enable the Panel to ascertain that compensation was not being sought for the same losses in other categories within the Commission. The relevant Claimants were requested to submit their responses by 30 September 1998.

7. On the basis of the responses received it was ascertained that eight individuals had filed category "C" claims for losses which had either been

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incurred by their Government or in respect of which they had received compensation from their Government. Appropriate deductions were made from the relevant Government claims in this instalment to avoid multiple recovery.

8. The responses also enabled the secretariat to ascertain that no individual was seeking compensation in category "D" claims for losses in respect of which he or she had received compensation from his or her Government.

9. In addition to informing the Claimants that their Claims were under review and requesting the abovementioned identification information, the procedural orders of 24 July 1998 requested a number of Claimants to provide information and documents which the Panel considered necessary to properly quantify the losses in the Claims. The relevant Claimants were requested to submit their responses to these requests by 30 September 1998. Responses were received.

10. In reviewing the Claims, the Panel held regular meetings conducted in private at the Commission's headquarters in Geneva. Pursuant to article 34 of the Rules, the secretariat provided legal, administrative and technical support to the Panel. A consultant loss adjusting firm was retained to assist the Panel in the verification and valuation of the Claims.

II. THE CLAIMS

11. The standard claim form for category "F" claims contains the following twelve general loss types: contract; business transaction or course of dealing; real property; other tangible property; bank accounts and securities; income-producing property; payment or relief to others; evacuation costs; public service expenditures; environmental damage; depletion of natural resources; and other losses. The claims in the present instalment raise eight of these twelve loss types. The next section of this report describes the Claims by loss type.

12. On a number of occasions the Panel considered it more appropriate to review a particular loss under a different classification from that under which it had been entered by the Claimant in the claim form. These losses are discussed below as reclassified.

A. Contract

1. Australia

13. The claim submitted by Australia on behalf of the Australian Trade Commission seeks compensation for a total of 212,515 Australian dollars ("A$") for rent paid on the premises of the Trade Commission in Iraq for the period 30 September 1990 to 31 March 1992, and rent paid in advance on the residence of the Australian Trade Commissioner in Iraq in respect of the period of the occupation of Kuwait. The Claimant seeks compensation

because, following the evacuation of the members of the Trade Commission in August 1990, it was unable to use the premises.

14. The claim submitted by Australia on behalf of the Overseas Property Group seeks A$131,302 in respect of rent paid in advance on office and residential properties in Kuwait, which the Claimant was unable to use following the invasion and occupation of Kuwait.

2. Finland

15. Finland claims 379,101 Finnish markkaa ("Fmk") as compensation for rent paid in advance on the premises of its Embassy in Kuwait, and on the residences of five members of its diplomatic mission in Kuwait, which it was unable to use after the mission was closed.

16. Finland also seeks compensation for termination payments made to six members of ancillary staff employed by its diplomatic mission in Kuwait. The Claimant asserts that, as a result of the invasion and occupation of Kuwait, the contracts of locally employed staff of its Embassy in Kuwait had to be terminated and the Claimant had to make redundancy payments, payments in lieu of notice and pay holiday remuneration in accordance with the contracts of employment and the relevant Kuwaiti laws. The Claimant seeks Fmk 155,026 in respect of termination payments and accrued dues.

3. The Russian Federation

17. The Russian Federation seeks compensation in the amount of US$2,030,700 for the cost of leasing temporary premises for its Embassy in Kuwait and staff residences for the members of the mission following the liberation of Kuwait. The Claimant asserts that a new Embassy complex comprising Embassy offices and staff residences was under construction and was due to be completed in September 1990. Following Iraq's invasion of Kuwait, construction work was interrupted and the complex was damaged during the period of the occupation. According to the Claimant, because of "disorganisation of economic life in Kuwait after the occupation and hostilities, in particular, the lack of necessary construct materials, the shortage of construction subcontractors, their lack of required revolving funds due to problems of restoration of the Kuwaiti bank system and other similar reasons", repair and completion work could not commence until August 1992. The residential section of the complex was commissioned in September 1993 and the administrative section in April 1994. Consequently, in order to house the staff and allow the Embassy to operate, offices and residences had to be rented from the date of the return of the members of the mission until the completion of the work on the relevant sections of the complex. The Claimant seeks compensation for the rent paid on 24 apartments from September 1990 to August 1993 and on three office buildings from September 1990 to March 1994.

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4. The United Kingdom

18. In the claim filed on behalf of the Commonwealth War Graves Commission, the United Kingdom claims compensation in respect of rent paid in advance on the residence of the Commission's supervisor in Iraq. The Claimant asserts that, in accordance with the lease, two years' rent had been paid in advance in January 1990. As the supervisor was unable to return to Iraq following the invasion of Kuwait, the Claimant is seeking compensation for the payments made in respect of a period of fifteen months, for a total of 32,553 pound sterling ("UK£").

5. The United States

19. In the claim filed on behalf of the United States Information Agency ("USIA"), the United States seeks compensation for rent paid in advance on the USIA office and Cultural Centre in Baghdad and on USIA staff residences in Kuwait and Iraq in respect of the seven months of the occupation of Kuwait, during which period it could not benefit from the use of the properties. The total amount claimed in respect of prepaid rent is US$110,531.

20. In the same claim, the United States also seeks US$97,265 as compensation for salaries paid to four employees in Kuwait during the period of the occupation of Kuwait. The Claimant asserts that the employees were hired on a contract basis, the terms of which obliged the Claimant to pay the employees until the end of their contracts even though it did not benefit from their services during the period of the occupation.

B. Real property

1. Finland

21. After the liberation of Kuwait, Finland flew a carpenter to Kuwait to repair the damage to the Embassy premises and staff residences. The Claimant seeks compensation for the wages paid to the carpenter and for the materials he used in carrying out the repairs. The total amount claimed for damage to real property is Fmk 16,223.

2. Lebanon

22. Lebanon asserts that, upon the return of its diplomats to Kuwait in the spring of 1991, it discovered that its Embassy premises had suffered damage and had been looted. The Claimant seeks 10,000 Kuwaiti dinar ("KD") for the cost of repairing the Embassy and installing alarm and air-conditioning systems.

3. The Russian Federation

23. The Russian Federation seeks KD 1,056,052 as compensation for the cost of repairing damage to its Embassy complex in Kuwait and for increases

in the cost of the contract for completing the Embassy complex. According to the Claimant a new Embassy complex, consisting of offices and staff residences, was being built in Kuwait at the time of the invasion. The complex was due to be finished in September 1990, but, because of the invasion and occupation of Kuwait, construction work was interrupted prior to completion. The Claimant asserts that, in the course of an inspection of the Embassy complex in September 1991, a team of specialists from the Ministries of Foreign Affairs and Finance discovered that the compound had suffered damage. It adds that "the front doors of the building were ripped off, the back doors were broken open; equipment, electrical wiring, water supply system, elevator facilities of the Embassy were severely damaged. ... The main building structures were not damaged seriously but the inner premises needed substantial repair". Completion and repair works began in August 1992 and were terminated in September 1994. The Russian Federation seeks compensation for "the work done to eliminate the damage caused to the buildings and for the increased cost of their finishing".

C. Other tangible property

1. Austria

24. The claim submitted by Austria on behalf of its Federal Ministry of Foreign Affairs seeks compensation for a total of KD 870 in respect of tangible property belonging to the Austrian Embassy in Kuwait that the Claimant asserts was stolen or damaged during the invasion and occupation of Kuwait.

2. Lebanon

25. Lebanon asserts that, upon return to Kuwait after the liberation, the Lebanese Ambassador to Kuwait discovered that a number of items of tangible property had been stolen from the Embassy or had been damaged. The Embassy safe had also been broken into and KD 1,946 had been stolen. The Claimant seeks KD 7,327 as compensation for the stolen money and for the cost of replacing the stolen and/or damaged items.

3. The Russian Federation

26. The Russian Federation claims 45,196 Iraqi dinars ("ID"), 77,189 roubles ("R"), KD 116,672 and US$207,400 as compensation for tangible property losses suffered by its Embassies in Iraq and Kuwait, its Consulate General in Basra, and by the representations of Sovfrakht, a subsidiary of the Ministry of Marine Shipping involved in freight operations, and the Press Agency Novosti in Kuwait. According to the Claimant, the property of the Embassy in Kuwait and of all governmental agencies was stored in the basement of the new Embassy compound, the doors of which were welded shut. Upon the liberation of Kuwait, a vanguard team was sent to Kuwait to reopen the Embassy and the agencies. According to the Claimant, the team found that the Embassy and the premises of the agencies had been plundered. It adds that "the most expensive state property ... modern technical equipment

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stored in the basement of the new embassy [had been] stolen". Other property left in the premises of the agencies had also been looted or damaged. The property in question was office and household equipment, the diesel electric generator of the Embassy in Iraq, vehicles and spare parts, food, medical supplies, books and educational materials.

27. The Russian Federation also seeks R 58,116 as compensation for items that had been shipped from the Russian Federation to Kuwait but which had not yet been collected from the cargo storage building at the Kuwait City airport at the date of the invasion. The Claimant explains that, following the invasion, because of the blockade of the airport, it was impossible to recover the property. It adds that the cargo storage building was severely damaged in the course of military operations. Accordingly, the Claimant considered that its property had been destroyed and wrote it off from its property inventory.

4. The United Kingdom

28. In the claim submitted on behalf of the Commonwealth War Graves Commission, the United Kingdom seeks 424 Jordanian dinar ("JD") as compensation for the cost of replacing the wheels on the Commission vehicle which the Claimant asserts were stolen during the occupation of Kuwait.

5. The United States

29. In the claim filed on behalf of the Department of Defense, the United States seeks compensation for Government owned property "which Iraq forcibly caused the Marine Corps to abandon in the U.S. Embassy in Kuwait". The property in question included helmets, holsters, vests and flak jackets. The Claimant asserts that, upon their return to the United States Embassy in Kuwait in 1991, military personnel determined that the property had been damaged, destroyed or looted. A total of US$1,711 is sought as compensation for tangible property losses.

30. In the claim filed on behalf of the United States Information Agency, the United States seeks compensation for office and household equipment located on the premises of the USIA office and the staff residences in Kuwait, which was found to be either damaged or missing following the liberation of Kuwait. The property includes office equipment, a telecommunications disc, educational materials and equipment and four motor vehicles. The total claim for the cost of replacing the lost and/or damaged tangible property is US$316,586.

D. Bank accounts and securities

31. The Russian Federation seeks US$181,200 as compensation for interest which it asserts was not paid on the funds in the bank account of its Embassy in Kuwait. The Claimant explains that, following the invasion of Kuwait, all bank accounts at the National Bank of Kuwait were frozen and no interest was paid in respect of the period of the occupation. The Claim is

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for interest that would have accrued on the Embassy's account during the seven months of the occupation.

E. Payment or relief to others

1. Bangladesh

32. Bangladesh asserts that several thousand Bangladeshi nationals were evacuated from Iraq and Kuwait following the invasion and occupation of Kuwait. Upon their arrival in Bangladesh, the evacuees received cash advances from the Government to cover the cost of internal transport to their homes. The Claimant is seeking compensation for cash advances made to evacuees for a total of 58,350 Bangladeshi taka ("tk").

2. Finland

33. Finland claims that it reimbursed five diplomats whose personal property was lost and/or damaged in Iraq and Kuwait during the occupation of Kuwait. The payments were made pursuant to a special decree applicable to members of the Finnish diplomatic service. The Claimant seeks compensation for the reimbursements for a total of Fmk 1,112,524.

3. Germany

34. The claim Germany submitted on behalf of the Hessian Ministry for Women, Labour and Social Affairs seeks compensation for social security payments made from January to September 1991 and from May to September 1991 respectively to two Kuwaiti brothers studying in Germany whose means of support had been cut off following Iraq's invasion of Kuwait. The total amount claimed in respect of the payments is 12,436 deutsche mark ("DM").

35. In the claim submitted on behalf of the Government of Bavaria, Germany seeks compensation for welfare payments made to two German nationals evacuated from Kuwait, and for support payments made for the period from August 1990 to March 1991 to a Kuwaiti family which had fled to Germany following Iraq's invasion of Kuwait. The Claimant seeks compensation for a total of DM 24,268 for the support payments.

4. Italy

36. Pursuant to a special decree, the Italian Institute for Foreign Trade reimbursed one of its officials who had been posted in Kuwait at the time of the invasion for the loss and/or damage to his personal property. The Claimant seeks 40,000,000 Italian lire as compensation for this reimbursement.

5. Thailand

37. In the months immediately following the invasion and occupation of Kuwait some 7,800 Thai workers were evacuated from Iraq and Kuwait.

Thailand asserts that, upon their arrival in Thailand, the evacuees received a cash advance of approximately [illegible] Thai baht ("B") each to assist with the cost of onward internal travel to their final destination. The Claimant seeks a total of B 1,889,900 in respect of the cash advances.

6. The United Kingdom

38. In the claim submitted on behalf of the Commonwealth War Graves Commission, the United Kingdom seeks UK£3,022 as compensation for the reimbursement made by the Commission to its local supervisor in Iraq for lost and or damaged personal property.

39. In the claim submitted on behalf of the Department of Social Security, the United Kingdom seeks compensation for 228 travel grants paid to individuals returning to the United Kingdom as a result of Iraq's invasion of Kuwait and war and hostilities in other areas. The purpose of the grants was to provide "help with reasonable travel, accommodation or subsistence expenses" to returnees from their port of entry to their likely final place of stay in the United Kingdom. The Claimant also seeks compensation for the costs of administering the grant scheme. The total amount claimed for the grants and administration costs is UK£56,538.

40. The third claim submitted by the United Kingdom also relates to payment or relief to others. In the claim of the Ministry of Defence, the United Kingdom seeks compensation for reimbursements for loss of personal property made by the Ministry to 79 servicemen who had been on secondment to the Government of Kuwait at the time of Iraq's invasion and occupation of Kuwait. The Claimant also seeks compensation for the fees charged by loss adjusters retained by the Ministry of Defence to review the requests for indemnification. The total of the Ministry of Defence claim is UK£2,253,816.

7. The United States

41. In the claim filed on behalf of the Ministry of Defense, the United States seeks US$404,913 as compensation for payments made to 26 United States servicemen who had been posted in Iraq and Kuwait at the time of the invasion and who lost items of personal property. The payments were made pursuant to special United States regulations.

42. In the claim filed on behalf of the Department of Health and Human Services, the United States seeks compensation for repatriation grants made to evacuees from Iraq and Kuwait to assist with onward travel in the United States and with settling-in expenses. The Claimant explains that payments were made to 90 per cent of the 2,260 evacuees who arrived from Iraq and Kuwait in the months following Iraq's invasion of Kuwait. It adds that, although the payments were intended to be limited to a one off lump sum payment of US$560 per person, on some occasions evacuees received more than one payment. According to the Claimant, fewer than five per cent of the repatriates received assistance after their first 90 days in the United

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States, even though a small number continued to receive payments for up to one year. The Claimant seeks compensation for a total of US$1,249,147 in respect of the financial assistance provided.

F. Evacuation costs

1. Australia

43. The claim submitted by Australia on behalf of the Overseas Property Group seeks A$2,047 for travel allowances and incidental travel costs paid to an officer of the Property Group who had been on mission in Baghdad at the time of Iraq's invasion and occupation of Kuwait and who had been forced to stay in Iraq for an additional 11 days.

2. Austria

44. Following the invasion and occupation of Kuwait, a number of Austrian nationals were held hostage in Iraq. The former president of Austria travelled to Iraq and successfully negotiated their release. In the claim filed on behalf of the Office of the Federal President, Austria seeks 1,535,520 Austrian schilling as compensation for the costs incurred in chartering the aircraft which took the former president to Iraq and transported some one hundred hostages back to Austria after their release, and in renting lounges at the airport in Vienna.

3. Bangladesh

45. Bangladesh seeks a total of tk 45,232,439 in respect of evacuation costs.

46. The Claimant asserts that, in the period immediately after the invasion and occupation of Kuwait, thousands of Bangladeshi workers who had been resident in Iraq and Kuwait were repatriated. Although international organizations such as the International Organisation for Migration operated special flights free of charge to evacuate the workers, the Claimant had to bear the cost of the handling fees for the flights. The Government of Bangladesh paid the handling fees on 56 evacuation flights in the months immediately following Iraq's invasion of Kuwait. The Claimant also asserts that it paid for the charter of one special flight to evacuate 177 additional evacuees. Compensation is claimed for the handling fees and the special flight. In addition to the costs incurred in setting up the air bridge, the Claimant also seeks compensation for the cost of freighting food and other relief materials by air from Bangladesh to camps in the Middle East where the evacuees were stationed before being repatriated.

47. The Claimant also explains that, upon their arrival in Bangladesh, evacuees were transported by bus from the airport to bus and train stations, from where they travelled to their final destination. In respect of this final portion of the evacuation journey, the Claimant seeks compensation for the cost of renting buses to transport the evacuees from the airport to the stations, and for the cost of petrol and motor oil for

the vehicles of the Ministry of Manpower and Labour officials who were meeting the evacuees.

4. Finland

48. Finland seeks Fmk 174,078 as compensation for evacuation costs. The Claim includes the airfares for individuals and diplomats evacuated from Kuwait and Iraq, stopover accommodation and food costs for evacuees on their way back to Finland, return airfares for the dependants of diplomatic staff in Israel from Tel Aviv to their homes in Finland and living expenses in Finland during the period they were evacuated, and the cost of hotel accommodation in Jerusalem and Herzilia for the staff of the diplomatic mission in Israel. The Claimant also seeks compensation for airfares for diplomatic staff evacuated from Iran, and for the cost of food provided to security staff at the Finnish Embassy in Damascus. The Claim also includes the travel allowances, and travel and accommodation costs of Foreign Ministry officials involved in the coordination of the evacuation.

5. Ireland

49. Ireland asserts that, in January 1991, the dependants of seven Irish military officers serving with the United Nations Truce Supervision Organisation in Israel were evacuated. The Claimant seeks compensation for the cost of return airfares from Israel to Ireland, accommodation during the evacuation journey and the dependants' extraordinary living expenses in Ireland for a total of 16,847 Irish pounds ("IR£").

6. Lebanon

50. Lebanon seeks compensation for a total of KD 2,500 for the cost of evacuating the members of its diplomatic mission in Kuwait.

7. The Russian Federation

51. The Russian Federation claims compensation for the cost of evacuating staff and their dependants from its diplomatic missions in Iraq and Kuwait. According to the Claimant, some 890 Russian nationals were evacuated from Kuwait. The majority of the evacuees travelled from Kuwait to Baghdad and from there to Amman by road on Embassy vehicles. They were then flown to Moscow on special Aeroflot flights. The remainder of the evacuees from Kuwait travelled by road to Baghdad and were then flown to Moscow on special Aeroflot flights. A smaller number of Russian nationals were evacuated from Iraq. Of the 128 evacuees, eight drove to Moscow, 80 flew on Aeroflot flights from Baghdad until the closure of that airport and the last group to leave, in January 1991, travelled from Baghdad to Tehran by road and then flew to Moscow on scheduled Aeroflot flights. The Claimant seeks compensation for the cost of the airfares, petrol for the road portion of the evacuation journey, food, accommodation and domestic transport.

52. The Claimant also seeks compensation for the cost of bringing the evacuees back to Iraq and Kuwait following the liberation of Kuwait.

53. The total claim for the evacuation and return of Russian nationals from and to Iraq and Kuwait is US$283,100.

8. Spain

54. Spain seeks compensation for a total of 68,634,852 Spanish pesetas ("Ptas") in respect of evacuation costs. The Claim is for the expenses incurred by the Spanish Embassies in Amman, Baghdad, Damascus, Jerusalem, Istanbul, Nouakchott, Paris, Rome, London and Stockholm in evacuating some four hundred people from various locations in the Middle East and Mauritania. The costs relate to airfares, accommodation and miscellaneous costs while in transit, and internal flights in Spain to take the evacuees to their final destination. The Claimant also seeks compensation for an airlift operated by the Spanish Ministry of Defence. The Spanish air force evacuated individuals from Saudi Arabia, Israel, Jordan, Syria and Turkey.

55. The Claim also seeks compensation for the cost of telephone calls made in Spain by the families of the evacuees and for meal allowances paid to civil servants who were coordinating the evacuation operations from Madrid.

9. Thailand

56. Thailand asserts that, in the months immediately following the invasion and occupation of Kuwait, it evacuated some 7,800 Thai workers from Kuwait and Iraq. According to the Claimant, the evacuees were taken by road from Kuwait and Iraq to Jordan, where they stayed in camps run by the United Nations High Commission for Refugees, before being flown out to Thailand. The Claimant seeks compensation for the cost of chartering 31 special flights from Amman and Dhaka to Bangkok and for the cost of airfares on scheduled flights from various locations in the Middle East to Thailand to evacuate 7,799 nationals. The Claimant also seeks compensation for the cost of petrol and related expenses for the overland portion of the journey and for the operational costs (food, medicines and other relief materials) incurred by the collection camps it operated in Iraq. According to the Claimant, upon their arrival at Bangkok airport, the evacuees were transported by bus to the bus station from where they travelled to their final destination in Thailand. In respect of this portion of the evacuation journey, the Claimant seeks compensation for the cost of renting buses to transport the evacuees from the airport to the bus station.

57. The Claimant explains that the bulk of Thai workers in Kuwait and Iraq were evacuated in the period from 2 August 1990 to 11 October 1991. In the period from January 1991 to end of March 1991, the Claimant set up a number of camps in Jordan, Saudi Arabia and Israel to shelter any remaining Thai nationals in the area, and as a precautionary measure in case of armed attack on Israel or the neighbouring States. The Claimant seeks

compensation for the costs of setting up and operating the camps. Furthermore, according to the Claimant, a team of 44 officials from the Ministry of Public Health and the Ministry of Foreign Affairs and Department of Labour were sent to the Middle East during the period of Iraq's occupation of Kuwait to assist in the coordination of the evacuation operations and to provide medical assistance. The Claimant seeks compensation for the officers' travel and accommodation costs.

58. Thailand seeks a total of B 155,457,625 for evacuation costs.

10. The United States

59. In the claim filed on behalf of the Department of Health and Social Services, the United States seeks US$410,937 in respect of costs incurred by five states and the Salvation Army in setting up and operating reception centres and providing evacuees with immediate assistance.

60. In the United States Information Agency claim, the United States seeks US$62,693 as compensation for subsistence expense allowances paid to the dependants of USIA employees evacuated from Israel and Saudi Arabia. The payments were intended to cover extraordinary costs associated with their abrupt departure. All the payments were made to cover expenses incurred in the United States after the evacuees' arrival.

G. Public service expenditure

1. Bangladesh

61. Bangladesh seeks compensation for the cost of printing and photocopying claim forms for submission of individual claims to the Commission, for the cost of computerizing documents, for miscellaneous stationery costs, for overtime and food allowances paid to officials of the Ministry of Manpower and Employment and Training involved in the processing of claims and for the cost of transporting claim forms to Geneva. The Claimant seeks compensation for a total of tk 1,344,323 in respect of claim processing costs.

62. Bangladesh also asserts that for humanitarian reasons it does not intend to levy the 1.5 per cent charge from the claims of individuals and corporations which Governing Council decision 18 empowers it to charge.4/ Instead, the Claimant seeks reimbursement of the fee it did not levy on the awards it expects the Commission to make to individuals and corporate claimants. Bangladesh seeks compensation for a total of US$10,710,000 in respect of the charge it did not levy.

2. Finland

63. Finland seeks compensation for the cost of purchasing medicines, protective equipment and miscellaneous "emergency equipment", such as blankets, mattress and a gas cooker for its Embassies in the United Arab

Emirates, Iraq, Kuwait, Syria, Iran, Saudi Arabia and Israel. It also seeks compensation for the cost of transporting and installing a short wave radio and solar panel to its mission in the United Arab Emirates and the travel costs of an official from the Embassy in the United Arab Emirates who delivered protective equipment to Finnish nationals in Bahrain and Qatar. The Claimant also seeks compensation for the cost of hiring two buses for one month in Israel so that they could be on standby should it be necessary to effect an emergency evacuation of the Embassy staff in Tel Aviv. Finland's claim for protective measures is of Fmk 351,671 plus US$1,400.

64. The Claimant also seeks compensation in the amount of Fmk 241,037 for general public service expenditures. This amount includes the cost of a number of official trips concerning the evacuation operations and the reopening of the Finnish Embassy in Kuwait in the summer of 1991, the cost of bi-weekly and daily telephone calls to Finland by members of the Finnish diplomatic missions in Syria and Israel respectively, the cost of registering the vehicle of the Embassy in Kuwait in Turkey, and the cost of insurance and road permits in Amman for the vehicle of the mission in Baghdad.

3. Germany

65. In the claim filed on behalf of the Federal Ministry for Research and Technology, Germany seeks compensation for a total of DM 3,012,958 in respect, first, of funds provided by the Ministry to the University of Hohenheim for a joint research project with the Kuwait Institute for Research and Technology and, secondly, for the cost of scientific equipment which the university had loaned to the project's experimental station in Kuwait. The Claimant asserts that, immediately after Iraq's invasion of Kuwait, the town where the project was located was occupied by Iraqi forces. The project personnel fled and the research work was stopped. During Iraq's occupation of Kuwait, the experimental station was looted and the damage to the facility was so extensive that, following the liberation, it had to be written off as a total loss. In addition, the building of the Kuwait Institute of Scientific Research was looted and the storage media containing the experimental data gathered at the facility was destroyed.

66. In the claim submitted on behalf of the Federal Office of Administration, Germany seeks a total of DM 28,758 in respect of costs incurred in processing individual claims and sending them to the Commission in Geneva.

4. Ireland

67. In the period following Iraq's invasion and occupation of Kuwait, the Irish Ministry of Defence supplied respirators and other protective equipment to the Ministry of Foreign Affairs for distribution to Irish nationals in Jordan, Bahrain, Saudi Arabia and Iraq. The Ministry of Defence itself supplied protective equipment to Irish personnel stationed

in Lebanon, Israel and Iran. The Claimant seeks compensation for the cost of the protective equipment and for the reimbursement it made to the British Foreign and Commonwealth Office for respirators the latter had supplied to Irish citizens in Bahrain and Qatar. The total amount claimed in respect of protective equipment is IR£254,570.

5. The Russian Federation

68. The Russian Federation asserts that, following Iraq's invasion and occupation of Kuwait, a bombshelter was built in its Embassy in Iraq to protect embassy staff and their dependants. According to the Claimant, the Embassy and Commercial Mission in Iraq and a number of specialized agencies made available the equipment for constructing the shelter free of charge. The Claimant adds that the shelter was built entirely by the employees of the Embassy and agencies and specialists on mission in Iraq at the time. The Claimant seeks compensation for a total of US$148,500 in respect of the labour costs incurred in constructing the shelter.

69. The Russian Federation also claims US$26,627 as compensation for expenses incurred from 1991 to 1993 by members of its diplomatic mission in Kuwait in travelling to Abu Dhabi and Cairo to receive and send diplomatic correspondence because of the destruction of the special communications centre of the Embassy in Kuwait during Iraq's occupation of Kuwait.

6. Syria

70. In the claim filed on behalf of the Central Bureau of Statistics, Syria seeks compensation for the costs of establishing and operating a special compensation committee within the Ministry of State for Foreign Affairs entrusted with processing the claims of individuals and corporations for submission to the Commission. The total amount claimed for claim processing costs is US$2,143,997.

7. The United States

71. In the claim filed on behalf of the Department of Health and Human Services, the United States seeks compensation for the costs incurred by that department in administering the repatriation assistance scheme. The costs relate to the travel costs of Department officers, office supplies, photocopying, faxing and related office expenses, the salary of an additional employee hired to assist with the scheme, and the travel expenses and overtime allowances paid to officers from the Centre for Disease Control who were dispatched to the airports where the evacuees were arriving to ascertain whether any of the evacuees were suffering from communicable diseases. The total claim in respect of public service expenditure is US$46,371.

H. Other claims

1. Lebanon

72. Lebanon seeks compensation in the amount of KD 40,139 for loss of expected earnings. The Claimant asserts that, following Iraq's invasion and occupation of Kuwait, its Embassy and, consequently, the consular section in Kuwait were closed. The consular section was thus unable to provide the services for which it charged consular fees. Accordingly, the Claimant seeks compensation for the earnings it expected to make from consular fees during the seven months of the occupation of Kuwait.

2. Syria

73. In the claim filed on behalf of its Foreign Ministry, Syria seeks US$345,207 as compensation for loss of expected earnings in the form of consular fees. Following Iraq's invasion and occupation of Kuwait, the Syrian Embassy in Kuwait closed. Therefore, no consular services were rendered or consular charges levied. The Claimant seeks compensation for the earnings it expected to make from consular fees during the seven months of the occupation of Kuwait.

3. United States

74. The United States seeks US$70,682.90 as compensation for the costs of preparing the claims of the Department of Defense, the Department of Health and Human Services and the United States Information Agency.

III. LEGAL FRAMEWORK

75. In its report on part one of the first instalment of "F1" claims, the Panel discussed the legal framework within which the claims of Governments and international organizations would be decided by the Commission.5/ The discussion covered the law applicable to the category "F" claims, the procedural and evidentiary requirements imposed on the Claimants and the Panel's role in the proceedings. The Panel's findings concerning the applicable law, procedural rules and evidentiary requirements set out therein are also applicable to the claims in the present instalment.

76. In applying the aforementioned procedural and evidentiary requirements, the Panel found that within certain claims individual loss elements or portions thereof were not supported by particularized statements of claim or documentary or other appropriate evidence sufficient to demonstrate the circumstances or amount of the claimed losses in accordance with the Rules. In such cases, the Panel found that compensation should not be awarded for the portions of the Claims in question.

IV. COMPENSABILITY OF THE CLAIMS

A. Contract

1. Prepaid rent on Embassy premises, premises of governmental agencies and staff residences

77. Finland claims compensation for rent paid in advance on the premises of its Embassy in Kuwait and on the residences of five members of its Embassy staff. Australia, the United Kingdom and the United States claim compensation for rent paid in advance on the premises of Governmental agencies in Kuwait and Iraq and on the residences of their staff.

78. In the First Report, the Panel found that "the mere permanent or temporary closure of a diplomatic mission, even in time of armed conflict, does not give rise to a claim for compensation" and that "[i]n any event ... the Claimant would have incurred the rental expenses regardless of whether Iraq invaded and occupied Kuwait".6/

79. In the Third Report, the Panel considered the compensability of rent paid in advance on staff residences and found that, "rent paid in advance by Governments for staff residences should be considered in the same way as prepaid rent on Embassy buildings."7/ For the same reasons that the Panel found that the economic value of the loss of use of the Embassy premises was not quantifiable, because of the nature of the activities carried out by diplomatic missions, this type of loss was also not amenable to monetary evaluation.8/

80. In accordance with these findings, the Panel determines that the claims for prepaid rent on the premises of Embassies and Governmental agencies and on staff residences are not compensable. Accordingly, the Panel finds that the Australian, British and United States claims for rent paid in advance on office premises and staff residences in Kuwait and Iraq are not compensable.

2. Rental payments made after the liberation of Kuwait

81. The claim of the Australian Trade Commission for rent paid on the Commission's offices in Baghdad relates not only to payments made in respect of the seven months of the occupation of Kuwait, but also for rent paid up to the expiry of the sublease in March 1992. Rent was paid on the premises even though the Trade Commission did not reopen after the liberation of Kuwait. In the Panel's view, the claim for rent paid from the date of the liberation of Kuwait to the expiry of the lease is also not compensable. The Claimant made an independent decision not to return to Iraq to reopen the Trade Commission. Accordingly, the Panel finds that the rent payments made in respect of the period from March 1991 to March 1992 cannot be considered a direct loss resulting from Iraq's invasion of Kuwait and, therefore, are not compensable.

82. The Russian Federation seeks compensation for the cost of leasing temporary offices for its Embassy in Kuwait and residences for the staff of its diplomatic mission. The Claimant explains that, because of delays in repairing and completing the Embassy complex following the liberation of Kuwait, temporary premises had to be leased until the residential section of the complex was completed in September 1993, and the office section in March 1994. The Claimant also indicates that, although nearly completed at the date of the invasion, the compound had to be repaired and fitted out following the liberation of Kuwait and, because of delays and shortages of materials in the Kuwaiti construction market in the period following the invasion, the repair work could not commence before August 1992, or be completed before the aforementioned dates.

83. In the Panel's view, the cost of renting temporary premises while the Embassy and residences were being repaired is, in principle, compensable. However, certain limitations must be applied. First, no compensation should be awarded for rent paid in respect of the seven months of the occupation of Kuwait. The Claimant has not indicated whether the rent for this period was paid in advance - in which case in accordance with the principles laid down in the First and Third Reports it would not be compensable9/ - or, whether it was paid during the period of the occupation, as the properties were being used, in which case the Claimant has suffered no loss. Secondly, the Panel considers that, in view of the apparently limited nature of the damage to the Embassy complex, it would be unreasonable to award rent for the entire period claimed. The Claimant makes a general assertion that repair work could not begin until August 1992 because of the shortage of material and constructors in Kuwait following liberation. From many claims for repair costs filed before the Commission, it is clear that reconstruction work in Kuwait generally commenced in the second half of 1991 or, at the latest, in the first quarter of 1992. The Claimant has not provided a specific explanation of why such a delay in the commencement of the repair work was a result of Iraq's invasion and occupation of Kuwait. Accordingly, the Panel can only recommend compensation for rent paid on temporary residences and offices for one year, the shortest period for which a lease can be entered into, from the liberation of Kuwait, as this period can be considered to be a direct result of Iraq's invasion and occupation of Kuwait. The Russian Federation's need to rent premises for longer than one year must, in the Panel's view, be attributed to other external circumstances and, therefore, is not compensable.

3. Payments made pursuant to contracts of employment

84. When it closed its Embassy in Kuwait following the invasion, Finland terminated the contracts of six locally employed members of ancillary staff. Pursuant to the relevant Kuwaiti laws and the contracts of employment it had to make a number of termination payments to the employees. Compensation is sought for payments made to the employees in lieu of notice, for holiday pay and for redundancy payments.

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85. In the First Report the Panel considered claims for termination payments made by two Governments to their local employees upon the closure of their Embassies in Iraq and Kuwait and determined that payments made pursuant to contractual obligations should be compensated to the extent that they are adequately supported by documentary or other appropriate evidence.10/

86. For the same reasons, the Panel finds that the Finnish claim for termination payments is, in principle, compensable. However, the Panel considers that only those payments which relate to the termination of the contracts in the exceptional circumstances of Iraq's invasion and occupation of Kuwait should be compensable. On the other hand, payments that would have had to have been made in any event, but which had not actually been paid out by the date of the invasion, should not be compensated as they cannot be considered to be a direct result of Iraq's invasion and occupation of Kuwait. Accordingly, the portion of the Finnish claim that relates to two employees' accrued holiday pay for 1989 and 1990 is not compensable as it was already due to the employees at the time of the invasion.

87. Finland, Italy and the United States, in the claim filed on behalf of the Department of Defense, assert that, pursuant to special national regulations, they reimbursed members of their diplomatic staff, government agency officials and military personnel for loss of personal property in Iraq and Kuwait during the period of Iraq's invasion and occupation of Kuwait.

88. In the First and Third Reports the Panel considered similar claims for indemnification made in respect of loss of personal property and found them to be compensable contractual losses "to the extent that the reimbursements ... were made pursuant to special decrees or laws and regulations governing the employment contracts of members of the diplomatic service" provided they were adequately supported by documentary and other appropriate evidence.11/ The Panel considers that the same approach should be adopted in respect of the claims in the present instalment.

89. In the claim filed on behalf of the United States Information Agency, the United States seeks compensation for the salaries paid to four employees who had been hired in Kuwait on a contract basis. The Panel notes that the Claimant has not filed any evidence in support of this portion of its claim. All that has been submitted is a note prepared for the purpose of proceedings before the Commission indicating the total amount paid to the employees. In the Third Report the Panel ruled that explanatory statements are insufficient in themselves to meet the evidentiary standards imposed on category "F" claimants by the Rules.12/ Accordingly, the Panel finds that compensation should not be awarded for this portion of the USIA claim.

B. Real property

90. Finland and Lebanon seek compensation for the cost of carrying out repairs to their Embassies in Kuwait, which were damaged during the period of the occupation.

91. In the First Report the Panel addressed the issue of the compensability of repairs to Embassy premises in Kuwait and Iraq and concluded that claims for repair costs could be considered as resulting directly from the invasion and occupation of Kuwait. Consequently, the Panel found such losses to be compensable.13/

92. In accordance with its findings in the two previous instalments, the Panel finds that the repair costs claimed by Finland and Lebanon are compensable to the extent to which they are reasonable and adequately supported by documentary or other appropriate evidence.

93. The Russian Federation seeks compensation for the cost of repairing damage to its Embassy complex in Kuwait, for the cost of completing the construction of the complex and for the cost of carrying out some additional work.

94. In the Panel's view, compensation can only be recommended for the cost of repairing damage suffered as a result of Iraq's invasion and occupation of Kuwait. No compensation should be awarded for that portion of the costs that relate to the completion of the original work or the performance of additional work. As the documents submitted do not indicate the split of the costs among the three elements, the cost of the repair work cannot be precisely determined. Instead, this figure has to be estimated.

95. The Panel notes that on the basis of the materials filed in support of this portion of the Claim, it is not possible to determine with certainty the apportionment of the total costs claimed between repair and completion costs. Thus, in response to the Panel's procedural order of 30 September 1998 the Claimant submitted, inter alia, an addendum, dated 1 August 1992, to the original contract for the construction of the complex of January 1988, which provides that the Claimant would pay the contractor KD 874,910 in respect of "the completion of the remaining works of the complex, the repair of damages and the implementation of works originally to be implemented by the Owner". Similarly, the Claimant entered into an agreement with another contractor in the summer of 1993 for KD 47,000 for the "rectification of damages", "all items to be completed" in Block B and the "supply and fixing of carpet rolls and carpet tiles".

96. The Claimant seeks KD 134,143 for the cost of carrying out some additional work. From the original contract it is clear that the Claimant originally intended to carry out these works itself. Following the liberation of Kuwait, the Claimant decided that the contractor would carry out the works that had originally been excluded from the contract.

97. Regardless of whether increases in the cost of construction contracts following the liberation of Kuwait are, in principle, compensable, the case at hand does not raise this issue. This is because the work in question was not included in the original contract of 1988 as it was going to be carried out by the Claimant. Therefore, the sums that the Claimant considers to be an increase in completion costs are actually the costs of an entirely new element in the construction contract and, as such are not compensable.

98. However, in the Panel's view, the claim for additional work does contain a compensable element. Under the contract of January 1988, the contractor agreed to supply the materials and equipment necessary for the Claimant to carry out the work in question. The material was supplied but was stolen during the occupation of Kuwait. Compensation should be recommended for such material. However, as the documents submitted do not break down the KD 134,143 into labour costs and materials, the Panel cannot determine with certainty what portion of this amount relates to the cost of replacing the stolen materials. The cost of the material must, therefore, be estimated.

C. Other tangible property

99. A number of Claimants seek compensation for loss or damage to tangible property belonging to diplomatic missions or other governmental agencies in Iraq and Kuwait damaged during the period of the occupation of Kuwait.

100. In the First Report the Panel considered that, for the reasons given in respect of claims for damage to real property, claims for loss or damage to other tangible property located in Iraq and Kuwait should also be compensable to the extent that the loss was adequately supported by documentary or other appropriate evidence.14/ The same reasoning applies to the Claims in the present instalment, including a claim for cash stolen from the safe of an Embassy in Kuwait.

101. Despite a specific request from the Panel to submit invoices or other primary documentation in support of their claims for loss and/or damage to tangible property, Austria and the United Kingdom have not filed any evidence. All that has been provided are lists of the lost items, prepared by the Claimants for the purpose of the proceedings before the Commission. As already determined by the Panel in the Third Report, an explanatory statement is insufficient of itself to meet the evidentiary requirements placed on claimants by the Rules.15/ Accordingly, in the absence of any other documents in support of these Claims, the Panel cannot recommend the award of any compensation in respect of the claim of the Austrian Federal Ministry of Foreign Affairs and the portion of the Commonwealth War Graves Commission claim relating to tangible property losses.

D. Bank accounts and securities

102. The Russian Federation seeks compensation for interest not paid on its Embassy's bank account at the National Bank of Kuwait in respect of the seven months of the occupation, when all bank accounts were frozen.

103. In response to a request for information issued by the Panel under article 36 of the Rules, the National Bank of Kuwait explained that, although all bank accounts were frozen for the period of the occupation of Kuwait, following the resumption of business on 22 March 1991, pursuant to an Amiri Decree, interest was paid to all depositors in respect of the entire period of the occupation "by credit to customers' accounts by back value adjustments on the dates when the interest payments would have become due." On the basis of this information, and since the Claimant failed to provide evidence that interest was not paid to it, the Panel is unable to recommend the award of compensation in respect of this portion of the Russian Federation's claim.

E. Payment or relief to others

1. Cash advances

104. Bangladesh and Thailand seek compensation for cash advances they made to evacuees to assist them with the cost of overland travel to their final destination in their home states.

105. In the First Report the Panel held that "payments by Governments for temporary and extraordinary living expenses that result from individuals' departure from Kuwait or Iraq" were compensable.16/ In the Third Report, the Panel reviewed a claim for cash advances made to assist evacuees with the costs of the final part of their homeward journey. The Panel determined that the cash advances were payments made by Governments for "temporary and extraordinary expenses" resulting from individuals' departure from Iraq and Kuwait and, as such, were compensable.17/

106. For the same reasons, the Panel finds that the claims for cash assistance in the present instalment are compensable.

2. Reimbursements for loss of personal property

107. In the claims filed on behalf of the Commonwealth War Graves Commission and the Ministry of Defense, the United Kingdom claims compensation for reimbursements for loss of personal property made to the War Graves Commission supervisor in Iraq and to 79 servicemen who had been on secondment to the Government of Kuwait at the time of the invasion. The Claimants were not under any contractual or other obligation to indemnify their employees, as was the case in the claims for reimbursements discussed at section IV.A.3 above.

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108. Paragraph 36 of Governing Council decision 7 provides that compensation is available "to reimburse payments made or relief provided by Governments or international organizations to others ... for losses covered by any of the criteria adopted by the Council."18/

109. In the Panel's view, the effect of this provision is to make compensable claims for payments made by Governments in respect of losses for which the recipients would have been entitled to file individual claims before the Commission, to the extent the underlying individual losses are compensable in accordance with the criteria developed by the Commission for individual claims.19/

110. Applying these criteria to the present Claims, the Panel notes that the servicemen and the supervisor could have filed individual claims before the Commission under categories "C" and "D" for their losses of personal property. Accordingly, the Panel finds that the reimbursements are compensable to the extent that they are supported by documentary or other evidence.

111. The Panel notes, however, that despite an express request to submit invoices or other primary documents evidencing the underlying loss and/or damage to property, no documents have been adduced to evidence the reimbursement made to the supervisor or the underlying property losses. The Claimant has merely stated that it reimbursed the supervisor and has provided a list of the lost property, prepared for the proceedings before the Commission. In accordance with its determination in the Third Report that explanatory statements are not sufficient on their own to meet the evidentiary standard imposed on claimants by the Rules,20/ the Panel finds that the Commonwealth War Graves Commission claim fails to meet the evidentiary standard established by the Rules and therefore does not recommend the award of any compensation in respect of this portion of the Claim.

112. The Ministry of Defense also seeks compensation for the fees paid to the loss adjusters retained by the Ministry to adjust the requests for indemnification. In the Panel's view, this expense was an administrative cost incurred in valuing the underlying losses. As such, it cannot be considered to result directly from Iraq's invasion and occupation of Kuwait. Consequently, the Panel cannot recommend any compensation for this portion of the Ministry of Defense claim.

3. Support payments

113. The claims filed by Germany, on behalf of the Hessian Ministry for Women, Labour and Social Affairs and the Government of Bavaria, seek compensation for support payments made by the Claimants to a number of evacuees from Kuwait. In the claim filed on behalf of the Department of Social Security, the United Kingdom claims compensation for travel grants paid to individuals returning to the United Kingdom as a result of the invasion of Kuwait and hostilities in other areas. The grants were

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intended to cover the evacuees' travel expenses within the United Kingdom. In the claim submitted on behalf of the Department of Health and Human Services, the United States seeks compensation for repatriation grants paid to evacuees from Iraq and Kuwait to assist them with onward travel in the United States and settling expenses.

114. In the First Report the Panel found that "payments by Governments for temporary and extraordinary living expenses that result from individuals' departure from Kuwait or Iraq or their inability to return to those countries during the period of 2 August 1990 to 2 March 1991 are directly related to Iraq's invasion and occupation of Kuwait."21/ The Panel also found that "the Commission cannot award more to Governments who provided relief to others than the recipients of the relief would have been entitled to had they filed an individual claim in category 'C'". For example, in the first "C" Report, income loss claims were limited to seven times a claimant's monthly salary.22/ For these reasons, the maximum period for which the Panel considered recommending compensation for temporary relief payments made by a Government to a person whose source of support in Kuwait or Iraq was cut off was seven months.23/

115. The Panel considers that the same approach should be adopted with regard to the claims in the present instalment. Accordingly, it will only recommend compensation for payments for "temporary and extraordinary" support for a maximum of seven months.

116. In the First Report the Panel also addressed the issue of the date when the relief payments were made. It found that in cases where compensation was sought for support payments made considerably after the liberation of Kuwait, Claimants had to provide an explanation of the special circumstances which, in it its view, rendered such payments a direct result of the invasion and occupation of Kuwait.24/

117. The Panel confirms the approach that it took in the First Report, and the Panel considers that, in the absence of an explanation of the special circumstances, payments will only be compensable if they relate to a reasonable period immediately after the liberation of Kuwait. In the circumstances of the claims before it, the Panel considers 1 May 1991 to be a reasonable cut-off date. Accordingly, any payments made in respect of a period after 1 May 1991 will not be compensated.

118. In the Panel's view, all of the aforementioned claims relate to payments of "temporary and extraordinary" living expenses and, as such, are compensable, provided they do not exceed a period of seven months or were not made in respect of a period after 1 May 1991.

119. The Panel notes that, despite being expressly requested in a procedural order to submit this information, the United Kingdom was unable to provide any indication of the identity of the recipients of the travel grants, their place of origin in the Middle East, the amount paid to each evacuee and in respect of what period, when the payment was made, or, how

many of the travel grants were paid to individuals fleeing from conflicts unrelated to Iraq's invasion of Kuwait. Although convinced that travel grants were paid, in the absence of such information the Panel is unable to properly value the Claim and, accordingly, can only recommend compensation for a reasonable proportion of the amount claimed.

120. The same Claimant also seeks compensation for costs incurred in administering the scheme, but has not filed any evidence in support of this claim. The Panel is thus unable to recommend any compensation in respect of this portion of the Claim.

121. In response to a procedural order requesting information on the identity of the recipients of the repatriation grants, how much each evacuee received and the period in respect of which the payments were made, the United States Department of Health and Human Services merely indicated that the payments were made to 90 per cent of the 2,260 evacuees from Iraq and Kuwait who arrived in the United States by December 1990 at the latest, that the basic payment was US$560 per person, and that fewer than five per cent of the repatriates received assistance after their first 90 days in the United States. In the absence of information on the precise amount paid to each evacuee, the Panel can only recommend compensation for a reasonable proportion of the amount claimed, assessed on the basis of the basic US$560 lump sum paid to 95 per cent of the abovementioned 90 per cent of evacuees who received repatriation grants.

F. Evacuation costs

122. A number of Claimants seek compensation for costs they incurred in evacuating individuals from a number of states in the Middle East and from neighbouring areas following Iraq's invasion of Kuwait.

123. In the First and Third Reports, the Panel laid down a number of principles governing the compensability of claims for evacuation costs.25/ The same principles are applicable to the claims in the present instalment. Accordingly, compensation will only be recommended for claims for costs incurred in evacuating individuals from Kuwait, Iraq, Israel and Saudi Arabia, and for expenses directly related to evacuation such as travel, accommodation, food, urgent medical treatment and the cost of establishing and operating transit camps.

124. The Russian Federation seeks compensation for costs incurred in evacuating individuals from Iraq and Kuwait. No evidence has been filed in support of this portion of the Claim. Accordingly, the Panel is unable to recommend the award of any compensation. The Panel notes, however, that some of the evacuation flights in respect of which compensation is sought in the Russian Federation's claim form the basis of a claim submitted in category "E" by Aeroflot.

125. A number of claimants seek compensation for accommodation, travel and miscellaneous costs incurred by Government officials involved in the

evacuation operations both in the Middle East and in the Claimant states. The United States Department of Health and Human Services also seeks compensation for reimbursements the department made to five states of the Union and to the Salvation Army for costs they incurred in receiving the evacuees. The Claimant asserts that the expenses relate to the rental of facilities to be used as reception centres, the cost of setting up telephone lines and the cost of telephone calls, the cost of emergency medical and psychological care for the evacuees, overtime salaries paid to state employees and some financial assistance payments made by the states to the repatriates.

126. In the Third Report the Panel reviewed claims for public service expenditure of a general nature, such as the costs of official missions and the costs of transfers of diplomats. It found that "these expenses were incurred by States in the exercise of protective functions in times of emergency. As these tasks are an integral part of the function of diplomatic missions, they cannot in the Panel's view be considered to be of the extraordinary nature that would warrant their compensability".26/

127. In the Panel's view, the same reasoning applies to expenses incurred by Government officials operating from their home state. Accordingly, such general expenses are not, in the Panel's view, compensable. An exception must be made, however, for costs directly related to compensable evacuation activities such as the provision of medical assistance. Therefore, the costs incurred by the Thai officials in the Middle East in providing medical assistance to evacuees should be compensated. The Panel was unable to recommend compensation in the United States' claim as it could not identify any specific costs relating to medical assistance provided.

128. The Panel considers that compensation should be recommended for financial assistance provided to evacuees by individual states of the Union and reimbursed by the Department of Health and Human Services to the extent that it could be identified as a specific reimbursement within the Claim. As the Claimant did not provide any information or documents concerning the underlying payments to the evacuees, the Panel only recommends compensation for a reasonable proportion of the amount claimed.

129. The United States, in the claim submitted on behalf of the United States Information Agency, and Ireland seek compensation for living allowances and expenses paid to the dependants of government officials who had been repatriated to cover expenses incurred in their home state.

130. In the Third Report the Panel considered a similar claim for allowances paid to Government officials and their dependants after their arrival in their home state. The Panel found that the payments were not compensable as they "were not intended to cover 'temporary and extraordinary living expenses that resulted from individuals' departure from Kuwait or Iraq during the period of 2 August 1990 to 2 March 1991'"27/ but, rather, were "discretionary payments for ongoing ordinary living

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expenses that are incurred after a person has left the region"28/ and, as such, not compensable.29/

131. In the Panel's view, the same reasoning applies to the claims in the present instalment. Accordingly, no compensation is recommended in respect of the portion of the Irish claim for payments made in respect of living expenses in Ireland and the portion of the United States claim relating to subsistence allowance payments made to its officials.

132. The Panel notes that Australia, in the claim submitted on behalf of the Overseas Property Group, and Lebanon have not submitted any evidence in support of the evacuation costs portion of their claims. The Panel is thus unable to recommend that any compensation be awarded in respect thereof.

G. Public Service Expenditure

1. Claims processing costs

133. Bangladesh, Germany, in the claim submitted on behalf of the Federal Office of Administration, and Syria, in the claim submitted on behalf of the Central Bureau of Statistics, seek compensation for costs incurred in processing claims for individuals and corporations for submission to the Commission. Additionally, Bangladesh claims for compensation equivalent to the 1.5 per cent charge which, although authorized by Governing Council decision 18 to levy from the awards made by the Commission to individual and corporate claims, it chose not to deduct on humanitarian grounds.

134. The Panel considered claims for claim processing costs in the second instalment. There it referred to paragraph I.1 of Governing Council decision 18, which provided that

> "Governments may offset their costs of processing claims by deducting a small fee from payments made to claimants ... Such fees shall be commensurate with the actual expenditure of the Governments. In the case of awards payable to claimants in categories 'A', 'B' and 'C', the fees should not exceed 1.5 per cent, and for awards payable to claimants in categories 'D', 'E' and 'F', the fees should not exceed 3 per cent."

135. The Panel concluded that it was intended that this fee be the sole compensation to which Governments are entitled in respect of their claim processing expenditure and awarded no compensation to the claims for claim processing expenses. The same principles apply to the claims in the present instalment. Regardless of whether Governments have levied the fee from the awards of individuals and corporations, that is the sole source from which they can recover costs they have incurred in processing claims. Accordingly, the Panel finds that the three claims for claim processing costs in the present instalment, and Bangladesh's claim for the value of the charge it did not levy, are not compensable.

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2. Costs of protective measures

136. Finland and Ireland seek compensation for costs incurred in supplying protective equipment, medicines and miscellaneous other equipment to their nationals in a number of states in the Middle East. The Russian Federation built a bombshelter in its Embassy in Iraq for the protection of the members of its mission and their dependants. The Claimant seeks compensation for the labour costs incurred in constructing the shelter.

137. In the Third Report the Panel considered the compensability of claims for costs incurred by Governments in purchasing safety equipment. The Panel held that "safety measures taken by Claimants for the protection of individuals and property are a compensable expense, provided they are reasonable in relation to the type of risk to which the individual and/or property is exposed."30/

138. The Panel considers that the same principles are applicable in respect of the claims in the present instalment. In the Panel's view, when considering claims for costs incurred in purchasing safety and emergency equipment, a distinction must be drawn between, on the one hand, between safety equipment and measures whose sole use is protective, such as the purchase of Nuclear-Chemical-Biological ("NBC") equipment and the construction of the bombshelter, and, on the other hand, costs incurred in purchasing material which can be put to ordinary use or used in an emergency, such as jerrycans, batteries, wires, torches and adhesive tape. With regard to the former, the Panel is of the view that, provided the measures are "reasonable in relation to the type of risk to which the individual and/or property is exposed", and they are taken in relation to the "relevant geographical area" (see para. 140, *infra*), the costs of the protective measures should be compensable. With regard to the claims in the present instalment, supplying individuals with NBC equipment, building a bombshelter and purchasing medicines, are reasonable measures taken for the protection of individuals in view of the specific threat to which they were subjected in the period of the occupation of Kuwait and, as it cannot be reasonably expected that Embassies in the Middle East would have such protective equipment, the cost incurred in purchasing them can be considered a direct result of the invasion and occupation of Kuwait.

139. In the Panel's view, the same cannot be said of costs incurred in purchasing miscellaneous equipment that can either be put to ordinary use or be used in an emergency. The purchase of such items is not sufficiently related to the risk to which the Embassies in the Middle East were exposed as a result of Iraq's invasion and occupation of Kuwait for the costs incurred to be compensable. Furthermore, such material does not provide protection against any one specific threat but can be used in circumstances other than a protective response to military threat. The general use of such equipment and the fact that much of the equipment is something Embassies can be expected to stock in any event supports the finding that it cannot be considered compensable.

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140. The Panel considers that a geographic limitation is implied in the requirement that safety equipment is only compensable if it is reasonable in relation to the type of risk to which the individual and/or property is exposed, namely that only protective measures taken within a specific geographical area will be compensated. In the Panel's view, for example, the purchase of protective equipment for individuals in Qatar and Bahrain, two States which were not the subject of any specific threat of military action, cannot be considered reasonable. For the same reasons that the Panel limited the compensability of evacuation costs to those costs incurred in evacuating individuals from Iraq, Kuwait, Israel and Saudi Arabia only,31/ it also limits the compensability of costs incurred in taking protective measures to those taken in respect of individuals and property in the same four States.

141. Finland seeks compensation for the cost of renting two buses for a month to ensure they would be immediately available should it prove necessary to effect an emergency evacuation of the staff of its Embassy in Tel Aviv. Although this is not a typical protective measure, the Panel considers that, in the circumstances prevailing in Israel in the months following the invasion of Kuwait, ensuring the availability of emergency means of transport for embassy staff was a reasonable measure for the protection of individuals. Furthermore, keeping two buses on standby for a month was a relatively inexpensive manner of ensuring diplomatic staff could make a speedy departure in case of emergency. Accordingly, the Panel considers that the costs incurred in renting the buses are compensable.

3. Other expenditures

142. On closing its diplomatic missions in Kuwait and Iraq, Finland took the two Embassies' vehicles to other missions in the Middle East. In doing so, the Claimant had to re-register the vehicles and pay road tax. Compensation is sought for the costs incurred in these procedures.

143. The Panel considers that the costs incurred by Finland in re-registering embassy vehicles in Syria and Turkey cannot be considered an expense incurred for the purpose of entering those two States in the course of an on-going evacuation journey. Instead, they are costs incurred to ensure permanent and continued use of the vehicles. As such, they cannot be considered as costs arising as a direct result of Iraq's invasion and occupation of Kuwait.

144. Following the invasion and occupation of Kuwait, the Finnish Government agreed to pay the costs of bi-weekly and daily telephone calls to Finland by the members of its diplomatic missions in Israel and Syria respectively. The Claimant is seeking compensation for the costs of the telephone calls. Spain seeks compensation for the costs of the telephone calls made by relatives of evacuees from Spain.

145. In the Third Report the Panel found that the costs of telephone calls made by individuals held hostage in Kuwait were compensable as the

individuals were detained in Kuwait against their will in precarious conditions.32/ However, in the same report the Panel also determined that telephone costs incurred by individuals in the course of their evacuation journeys were not compensable.33/ The Panel notes that the telephone calls for which compensation is sought in the present instalment were not made by individuals detained against their will. Accordingly, the abovementioned Claims cannot be compared to those found compensable in the Third Report. Instead, they are comparable with the claims for telephone calls made by evacuees and, therefore, the Panel finds that no compensation should be awarded for the costs of the telephone calls.

146. A number of Claimants seek compensation for the cost of official trips by Government officials, for the cost of official travel to receive and send diplomatic correspondence, and for the costs incurred in administering the repatriation assistance schemes.

147. In the Third Report, the Panel considered similar claims for the costs of official missions, salaries paid to additional staff, and overtime payments and found that those expenses had been "incurred by States in the exercise of their protective functions in times of emergency".34/ It added that as the tasks in question were "an integral part of the functions of diplomatic missions"35/ they could not be considered to be of the extraordinary nature that would warrant their compensability.

148. In the Panel's view, although the Third Report only expressly refers to the functions of "diplomatic missions", the reasoning is equally applicable to the protective functions exercised by other Governmental agencies. Accordingly, the Panel determines that no compensation should be recommended for these portions of the Finnish, Russian and United States claims.

149. In the claim filed on behalf of the Federal Ministry for Research and Technology, Germany claims compensation for the investment it made in a joint research project with a Kuwaiti research institute pursuant to an inter-governmental agreement which, it claims, produced minimal results because of the damage suffered by the research facilities in Kuwait during the occupation. The Claimant also seeks compensation for the loss and/or damage of scientific apparatus loaned to the project in Kuwait by the University of Hohenheim, the German research institution involved in the project.

150. The Panel notes that the Claimant was not directly involved in the research project. Following the conclusion of the inter-governmental agreement with Kuwait, it had made a grant to the University of Hohenheim which had funded the German portion of the project. The terms of the grant did not envisage that the results of the joint project would be used for commercial or other purposes by the Claimant, nor that it would retain any interest, direct or indirect, in the funds paid to the University.

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151. The Panel notes that the Claimant Ministry did not expect any material return from the grant made to the University for a research project of a purely scientific nature. Furthermore, in spite of Iraq's invasion of Kuwait, the final project report prepared in 1993 states that "the grant's intended purpose has been achieved". Accordingly, the Claimant cannot be considered to have suffered any loss.

152. In the Panel's view, the only loss which has arisen as a result of Iraq's invasion and occupation of Kuwait is that relating to the scientific equipment loaned to the project by the University of Hohenheim. This was paid for out of the University's general funds and not out of the research project funds. The Panel, therefore, recommends that compensation be awarded in respect of the loss of the University's equipment on the same basis as for other tangible property losses. The Panel emphasizes that the award of compensation is intended for the University and not the Claimant Ministry, as it was the former which suffered the loss.

H. Other costs

153. Lebanon and Syria in the claim filed on behalf of the Foreign Ministry, seek compensation for loss of expected earnings from consular fees which they were unable to charge during the seven months of the occupation of Kuwait, when their diplomatic missions in Kuwait were closed.

154. In decision 9, the Governing Council addressed the compensability of business losses.36/ Paragraph 1 of the decision provides that "[t]he propositions and conclusions contained in this Decision shall apply to compensation for the loss of earnings or profits and other business losses covered by Security Council resolution 687 (1991)." Paragraph 3 emphasises that the decision does not attempt to describe all of the conceivable factual and legal situations which may result in compensable business losses. Section I of the decision deals specifically with losses in connection with contracts or past business practice and Section II addresses losses relating to tangible assets.

155. Although the claims for loss of consular fees in the present instalment are neither "losses in connection with contracts or past business practice" nor "losses relating to tangible assets", the Panel considers that they are claims for "loss of earnings or profits" of the kind referred to in paragraph 1 of the decision. Accordingly, the principles of compensability and valuation enshrined in Governing Council decision 9 are applicable by analogy to the present claims.

156. The Panel notes that the provision of consular services in exchange for the payment of a fee is an activity carried out by Governments on a cost-covering basis which is not intended to be income producing. The Panel nevertheless accepts that in exceptional circumstances the provision of consular services could produce an income and that the inability to provide the services would, in those circumstances, lead to a "loss of earnings or profits" of the kind referred to in paragraph 1 of Governing

Council decision 9. In such cases, the value of the compensable loss would be reached by offsetting costs that would have been incurred in providing the consular services from the claim for loss of earnings. Though not excluding that the consular section of the Claimants' Embassies in Kuwait could have been income producing, the Panel notes that, despite specific requests in a procedural order to provide details of the savings made by the consular sections in the months when the consular section in Kuwait was not operative, the Claimants did not provide sufficient explanations, figures or supporting documents for such savings. In the absence of such information any value put by the Panel on the actual loss of earnings would be purely speculative. Accordingly, the Panel finds that no compensation can be recommended for the claims for loss of consular fees.

V. OTHER ISSUES

A. Currency exchange rates

157. As in the first two instalments, some of the Claimants in the present instalment have incurred losses or stated their claims in currencies other than United States dollars. As the Commission issues awards in United States dollars, the Panel is required to determine the appropriate rate of exchange. In the First and Second Reports the Panel determined that adopting the currency exchange rate as at the date of loss was the most appropriate method of calculating the applicable exchange rate. The losses had occurred fairly regularly throughout the period of Iraq's occupation of Kuwait, namely from 2 August 1990 to 2 March 1991. The Panel adopted 16 November 1990, the midpoint of the occupation period, as the date of loss.

158. The Panel also noted that special circumstances existed in relation to the exchange rate to be adopted for losses suffered in Kuwaiti dinars. As the invasion and occupation of Kuwait had caused a significant disturbance of the exchange rate for the Kuwaiti dinar during the period of the occupation, the Panel adopted the exchange rate for the Kuwaiti dinar that prevailed immediately prior to the invasion.37/

159. The Panel finds that the majority of losses for which compensation is sought in the present instalment also occurred fairly regularly throughout the period of the occupation of Kuwait but, in general, it was not possible to identify the precise date of their occurrence. Therefore, in this instance, the Panel also considers 16 November 1990, the midpoint of the occupation, to be the most appropriate date for determining the applicable exchange rate. For the reasons given above, 1 August 1990 is the date adopted for determining the exchange rate for Kuwaiti dinars.

160. The rates of exchange used as at 1 August 1990 for the Kuwaiti dinar and 16 November 1990 for other currencies are the average monthly rates as reported in the United Nations Monthly Bulletin of Statistics of April 1991.38/

B. Interest

161. In decision 16 the Governing Council stated that "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award." The decision added that "the methods of calculation and of payment of interest will be considered by the Governing Council at the appropriate time" and that "[i]nterest will be paid after the principal amount of awards".39/ Thus, at this stage, the Panel need only set the date from which interest will run. For the same reasons that it adopted 16 November 1990 as the date of loss for the purpose of determining exchange rates, the Panel considers that the same date should be used for calculating interest. Accordingly, the Panel determines that interest be awarded on the Claims as of 16 November 1990.

C. Claims preparation costs

162. In a letter dated 6 May 1998, the Panel was notified by the Executive Secretary of the Commission that the Governing Council intended to resolve the issue of claims preparation costs at a future date. Accordingly, the Panel takes no action with respect to claims for such costs at this stage.

VI. QUANTIFICATION OF THE CLAIMS

163. As discussed above, the Panel considers that certain loss elements within the Claims should not be compensated because they fail to meet either the Commission's procedural and evidentiary requirements or the directness requirements as formulated in Security Council resolution 687 (1991).

164. In many of the Claims, the documentary or other evidence submitted established that an alleged loss had, in fact, occurred. The evidence was insufficient, however, to demonstrate with a reasonable degree of certainty the amount of the loss. In such cases the Panel, in conformity with general principles of law, exercised its discretion in assessing the amount of compensation to be recommended. In exercising such discretion, the Panel took into account the level and type of evidence that should reasonably be required of a claimant given the circumstances prevailing at the time of the loss, particularly in Iraq and Kuwait.40/

165. With respect to the loss elements that the Panel considers to be compensable, the Panel verified that the losses had, in fact, occurred and then quantified such losses. The Panel was assisted in this task by expert loss adjusting consultants and the secretariat. Initially, the Panel undertook a careful examination of the statements of claim and evidence filed by the Claimants. As explained in paragraph 9 above, the Panel then required certain Claimants to answer questions and to submit additional documents that it deemed necessary to quantify the amount of the alleged losses. In addition to verifying that the claimed losses had, in fact, occurred, the Panel also considered the reasonableness of the Claimants'

conduct and of the amounts claimed. For example, in relation to claims for evacuation costs, the Panel only recommended compensation for one-way economy fares.

166. In quantifying the losses, the Panel weighed the amount and type of evidence submitted in support of the claimed losses and received advice from the loss adjusters on the nature and quantity of evidence that a claimant would normally be expected to submit in comparable emergency situations. In reaching the figures of the recommended awards, the Panel adopted general principles of loss adjustment such as reasonableness of costs incurred, depreciation and betterment. For example, in claims for lost or damaged property where the amount claimed was the replacement value, reductions were made to take into account the age of the property in question at the time the loss or damage occurred. In respect of claims for reimbursements for lost or damaged property, deductions were made if sufficient evidence supporting the underlying losses had not been provided or to reflect depreciation or part use of the property.

167. The Panel limited compensation for evacuation costs to evacuations from Iraq, Kuwait, Israel and Saudi Arabia. Similarly, costs incurred in respect of protective measures were also limited to those taken within these four States. On occasion Claimants sought compensation for evacuation costs or protective measures taken in a number of states in the Middle East without providing a State by State breakdown of the costs. In these cases the Panel only recommended compensation for that proportion of the claims which it considered related to the aforementioned four States.

168. As noted in paragraph 95 above, the documents filed in support of the Russian Federation's claim for damage to the Embassy complex in Kuwait did not provide a breakdown of what portion of the costs were incurred in repairing the complex and what portion related to the cost of completing the construction work. Moreover, the description of the damage indicated that it was rather limited in nature and that some of the damage must be deemed to have occurred as a result of the delay in the resumption of the construction work. Accordingly, the Panel only recommended compensation for a percentage of the amount claimed. Similarly, it was not possible for the Panel to determine with certainty what portion of the sums paid for carrying out the additional work related to building materials - the only element which the Panel considered compensable - and what portion related to labour or other costs. In light of this uncertainty, the Panel was only able to recommend compensation for a percentage of the claim for additional work.

169. The Russian Federation explained that its claim for the cost of building the bombshelter in Baghdad related exclusively to labour costs because the necessary building materials and equipment had been provided free of charge by Russian companies operating in Iraq. The Claimant submitted estimates of the cost of the jobs carried out, but did not provide any information or supporting documents indicating who actually carried out the work or at what cost. The absence of such information and

of plans of the bombshelter made it impossible for the Panel to precisely value the claim or to assess whether the labour costs claimed were reasonable. Indeed, it was not clear whether external workers were hired to construct the shelter or whether the work was carried out by workers already employed by the diplomatic mission or specialized governmental agencies. In light of such uncertainty, the Panel only recommended compensation for a reasonable portion of the labour costs claimed.

170. On the basis of its review and evaluation of the Claims, the Panel makes the following determinations concerning the quantification of the Claims, summarized by general loss type in the table below. The amounts are stated in United States dollars.

QUANTIFICATION BY LOSS ELEMENT

Claimant	Contract	Real property	Tangible property	Bank accounts and securities	Payment or relief to others	Evacuation costs	Public service expenditures	Other	Total amount recommended
Australia: Australian Trade Commission	0								0
Australia: Australian Overseas Property Group	0					0			0
Austria: Federal Ministry of Foreign Affairs			0						0
Austria: Office of the Federal President						137,985			137,985
Bangladesh					1,630	1,230,953	0		1,232,583
Finland	36,806	4,500			196,478	10,433	49,340		297,557
Germany: Ministry for Research and Technology							2,699		2,699
Germany: Hessian Ministry for Women, Labour and Social Affairs					3,020				3,020
Germany: Government of Bavaria					14,409				14,409
Germany: Federal Office of Administration							0		0
Ireland						8,512	62,103		70,615
Italy	35,401								35,401
Lebanon		10,381	14,179			0		0	24,560
Russian Federation	585,010	820,391	376,742	0		0	74,250		1,856,393
Spain						416,402			416,402
Syria: Central Bureau of Statistics							0		0
Syria: Foreign Ministry								0	0

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QUANTIFICATION BY LOSS ELEMENT

Claimant	Contract	Real property	Tangible property	Bank accounts and securities	Payment or relief to others	Evacuation costs	Public service expenditures	Other	Total amount recommended
Thailand					75,055	6,173,853			6,248,908
United Kingdom: Commonwealth Graves Commission	0		0						0
United Kingdom: Department of Social Security					26,423		0		26,423
United Kingdom: Ministry of Defence					2,685,684		0		2,685,684
United States: Department of Defense	322,206		0						322,206
United States: Department of Health and Human Services					1,043,045		42,950		1,085,995
United States: Information Agency	0		192,926			0			192,926
Total									14,653,766

VII. RECOMMENDATIONS

171. On the basis of the foregoing, the Panel recommends that the following amounts be awarded as compensation for losses incurred by the Claimants as a direct result of Iraq's invasion and occupation of Kuwait:

(a) Australia: Trade Commission nil and Overseas Property Group nil;

(b) The Republic of Austria: Federal Ministry of Foreign Affairs nil and Office of the Federal President US$137,985;

(c) The People's Republic of Bangladesh: Ministry of Labour and Manpower US$1,232,583;

(d) The Republic of Finland: Ministry of Foreign Affairs US$297,557;

(e) The Federal Republic of Germany: Federal Ministry for Research and Technology US$2,699; Hessian Ministry for Women, Labour and Social Affairs US$3,020; Government of Bavaria US$14,409 and Federal Office of Administration nil;

(f) Ireland: Department of Defence US$70,615;

(g) The Italian Republic: Institute for Foreign Trade US$35,401;

(h) The Lebanese Republic: Ministry of Foreign Affairs US$24,560;

(i) The Russian Federation: Ministry of Foreign Affairs US$1,856,393;

(j) The Kingdom of Spain: Ministry of Foreign Affairs US$416,402;

(k) The Syrian Arab Republic: Central Bureau of Statistics nil and Foreign Ministry (Embassy of Syrian Arab Republic in Kuwait) nil;

(l) The Kingdom of Thailand: US$6,248,908;

(m) The Kingdom of Great Britain and Northern Ireland: Commonwealth War Graves Commission nil; Department of Social Security US$26,423 and Ministry of Defence US$2,685,684; and

(n) The United States of America: Department of Defense US$322,206; Department of Health and Human Services US$1,085,995; and United States Information Agency US$192,926.

Geneva, 22 January 1999

(Signed) Bjørn Haug
Chairman

(Signed) Georges Abi-Saab
Commissioner

(Signed) Michael J. Bonell
Commissioner

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Notes

1/ Governing Council decision 10, "Provisional Rules for Claims Procedure" (S/AC.26/1992/10).

2/ The amounts are those that appear in the Claimants' claim forms. Where admissible supplements have been filed or amendments have been made to a Claim, the Panel has based its recommendation on the amended total. While many Claims were originally stated in other currencies, the amounts claimed are stated in United States dollars in order to facilitate comparison. This does not prejudice the Panel's determinations of the amounts, if any, recommended for compensation. In respect of claims filed in other denominations, the United States dollar amounts have been calculated by using the August 1990 rates of exchange as indicated in the United Nations Monthly Bulletin of Statistics.

3/ Category "C" claims are individual claims for damages up to US$100,000 and category "D" claims are individual claims for damages over US$100,000. Pursuant to Governing Council decision 1 (S/AC.26/1991/1), as confirmed in paragraph 3 of Governing Council decision 13 (S/AC.26/1992/13), questions of multiple recovery do not arise in relation to payments made under category "A" (departure claims).

4/ Governing Council decision 18, "Distribution of Payments and Transparency" (S/AC.26/Dec.18 (1994)).

5/ "Report and Recommendations made by the Panel of Commissioners concerning Part One of the First Instalment of Claims by Governments and International Organizations (Category 'F' Claims)" (S/AC.26/1997/6), ("the First Report"), paras. 47-64. See also "Report and Recommendations made by the Panel of Commissioners Concerning Part Two of the First Instalment of Claims by Governments and International Organizations (Category 'F' Claims)" (S/AC.26/1998/4), ("the Second Report"), para. 45; and "Report and Recommendations made by the Panel of Commissioners concerning the Second Instalment of 'F1' claims" (S/AC.26/1998/12), ("the Third Report"), para. 75.

6/ The First Report, para. 74. See also the Second Report, paras. 55-56 and the Third Report, paras. 78-79.

7/ The Third Report, para. 81.

8/ Ibid.

9/ The First Report, para. 74 and the Third Report, para. 81.

10/ The First Report, para. 68.

11/ The Third Report, paras. 83-85. See also the First Report, paras. 67-68.

12/ The Third Report, para. 76.

13/ The First Report, paras. 71-73. See also the Second Report, paras. 63 and 73 and the Third Report, paras. 90-92.

14/ The First Report, paras. 76-78. See also the Third Report, para. 94.

15/ The Third Report, para. 76.

16/ The First Report, para. 85.

17/ The Third Report, para. 97.

18/ Governing Council decision 7, "Criteria for additional Categories of Claims", (S/AC.26/1991/7/Rev.1).

19/ The Panel adopted a similar approach in the First Report with regard to support payments made by Governments, which were limited to the maximum period for which individuals would have been compensated for income losses in category "C". The First Report, para. 86.

20/ The Third Report, para. 76.

21/ The First Report, para. 85.

22/ "Report and Recommendations made by the Panel of Commissioners concerning the First Instalment of Individual Claims for Damages up to US$100,000 (Category "C" Claims)" (S/AC.26/1994/3) ("First "C" Report"), pp. 192-93.

23/ The First Report, para. 86.

24/ The First Report, para. 84.

25/ See the First Report, paras. 92-96 and the Third Report, paras. 100-111.

26/ The Third Report, paras. 120-121.

27/ The First Report, para. 85.

28/ Ibid.

29/ The Third Report, paras. 105-106.

30/ The Third Report, para. 122.

31/ The First Report, para. 96.

32/ The Third Report, para. 119.

33/ The Third Report, para. 101.

34/ The Third Report, para. 121.

35/ Ibid.

36/ Governing Council decision 9, "Propositions and Conclusions on Compensation for Business Losses: Types of Damages and Their Valuation", (S/AC.26/1992/9).

37/ The First Report, paras. 99-102.

38/ United Nations *Monthly Bulletin of Statistics*, Vol. XLV, No. 4, April 1991, (ST/ESA/STAT/SER.1/220).

39/ Governing Council decision 16, "Awards of Interest", (S/AC.26/1992/16).

40/ See the First Report, para. 62.
